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## PREFACE

THIS book has been written at the invitation of the Royal Institute of International Affairs, which also suggested the title. It is curious that a subject of such importance and interest has been neglected by historians. The material is readily available, and my object has been so to arrange and analyse it as to make clear what have been the causes, objects and procedure of peaceful change in modern times. I have not gone back beyond the great European settlement of 1815, except for some incidental illustrations. Between that date and the present day my examination does not claim to be exhaustive, but to include all the more important and significant examples of every kind of peaceful change. Such a survey must obviously include not only the historical but also the legal aspect. On the latter I have had the benefit of the advice of Sir John Fischer Williams.

I have to thank Professor A. J. Toynbee and Professor C. K. Webster for their kindness in reading the manuscript of this book, to its great advantage.

C. R. M. F. C.

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## CHAPTER I

### INTRODUCTION

THE expression 'peaceful change' may seem at first sight to be plain and straightforward. This, however, is far from being the case. It is obvious indeed that all changes which were the direct result of war between those states which were the gainers or losers by it can be eliminated. But does the adjective imply that no change can be considered as peaceful which was accompanied by any violence or threat of force? Doubtless where a change was simply enforced by a threat of overwhelming strength it would be inappropriate to describe it as peaceful, even though no drop of blood was shed in its accomplishment. When Louis XIV sent his army to Strasbourg, the citizens, while strongly preferring their existence as a free city of the empire to incorporation within France, admitted that the 'strength of His Most Christian Majesty was so great and terrible' that all resistance was useless. Similarly the inhabitants of Cracow were prudent enough in 1846 to accept the forcible incorporation of their free city within the Austrian Empire, a demand which was backed by the might of the three states, Russia, Austria, and Prussia, which had been entrusted by the Congress of Vienna with the guarantee of its independence in 1815. Changes such as these may be described as the result of bloodless wars.<sup>1</sup>

But it must be remembered that the contingent threat of war has often, one might almost say generally, been one of the main considerations which have been decisive in securing a change without war. Indeed, this is inevitable, given the fact that all states were ready to hold in reserve, if not to display, the *ultima ratio regum* as an

<sup>1</sup> The transfer of territory by China to the Great European Powers by way of lease during the 'nineties may be considered as analogous, as China, after her defeat by Japan, was totally unable to resist such demands backed as they were by potential force.

instrument of policy. The agreement of France and Prussia in 1867 to allow the status of Luxembourg to be settled by an international congress was far from due to the pacific feelings which animated those states. It was merely because neither was yet ready to engage in war, and wished to find a more appealing and convincing *casus belli* than the Grand Duchy, that a conflict was averted. They neither expected nor desired that their mutual relations would be improved by the settlement, they merely hoped to paper over the ever-widening cracks. This is an extreme example, but history furnishes many instances where such changes have been carried out in a spirit of haggling, which has left behind as much ill will as had previously existed. Sometimes, on the other hand, changes which have been heralded by bitter words and military threats have created an atmosphere of mutual confidence. For instance, the disputes between the United States and Great Britain on the Maine and Oregon boundaries culminated in venomous propaganda and direct menaces. Yet their peaceful settlement pointed the way to a similar road in all controversies between the two nations, until in recent times a war between the two nations is constantly declared on either side of the Atlantic to be unthinkable. A very striking example of the effect of comparatively small changes in promoting good relations between two Powers can be studied in the Anglo-French Agreement of 1903. Doubtless, as official circles fully realized, it was powerfully in the interests of the two countries to draw closely together. Yet the governments would have been quite unable to carry public opinion with them without settling a number of questions which constituted festering points of continuous irritation all over the globe. As soon as a bargain had been struck, politicians and the Press found no difficulty in cementing an understanding so clearly dictated by mutual self-interest.

That all such transactions should be in the nature of bargains is evident, since the state is primarily an instru-

ment of egoism not of altruism. Even where no immediate equivalent or return is provided, concessions, particularly of a territorial kind, from one state to another are to be explained rather by *raison d'état* than by sentiment. For instance, the reasons for the cession of the Ionian Islands by Great Britain to Greece in 1864, an entirely spontaneous and apparently one-sided gift, are to be found partly in the troublesome and expensive business of their government, but mainly in the desire to promote good relations between a maritime Mediterranean state under a new dynasty already closely connected with Britain, and by so doing to safeguard the future of British naval policy within that sea. On the other hand, the warm phil-Hellenic sentiment of the British people which had persisted for more than a generation and the dispatch of Gladstone to the islands as High Commissioner undoubtedly made it easy for the British Government to make this unrequited cession without being accused of throwing away British interests without compensation. It is in fact often true that sentiment influences the character of a bargain, and makes its conclusion easier.

So far the changes under consideration have been indisputably of a peaceful character. There are, however, many of a more dubious nature. Is it appropriate to describe as peaceful such changes as were brought about by the unilateral denunciation of a treaty without previous negotiation? Three well-known examples have occurred in the last sixty-five years. In 1870 Russia denounced the Black Sea Clauses of the Treaty of Paris. In 1908 Austria-Hungary annexed the occupied provinces of Bosnia-Herzegovina contrary to the Treaty of Berlin. In 1936 Germany by the re-militarization of the Rhineland violated the Treaty of Versailles. In all these cases the action taken was successful without war, though in each the risk of war had been deliberately weighed. It will be convenient to include them within our limits. It is, however, obvious that the extension of such precedents would be

more likely to hinder than to help peaceable change in the future.

Again, there are a number of instances where the incorporation of territory into another state has been peaceably effected, but only after a civil war or revolution. For example, Avignon and the Venaissin territory 'gave itself' to France in 1791 after the earliest plebiscite recorded in modern history. Nothing could appear more correct and harmonious, but this happy result was attained only after a miniature civil war between the city of Avignon and Carpentras, the headquarters of the papal legate.

The incorporation of Texas and, virtually, of Panama within the United States are more or less analogous, with the added complication that after the former had been effected Mexico regarded it among other grievances as a *casus belli*.

Again, the peaceful transfer of a territory may be effected between states as a preliminary to, or as a consequence of, a warlike engagement between them. As an example of the former, Turkey ceded some small districts to Bulgaria before the latter agreed to join the Central Powers in 1915. As an example of the latter the treaty between Napoleon III and Victor Emmanuel of Savoy in 1859 envisaged the cession of Savoy and Nice to France in the event of Italy being 'freed from the Alps to the Adriatic'. These are unquestionably peaceful changes, though the object to be attained by them was war with another state. Another point of casuistry is the following. If a change is brought about by violence, but cannot become effective without the participation of neighbouring Powers, can it be considered as peaceful if those neighbouring Powers agree among themselves peaceably to embody it as a part of public law? The obvious and classic example is the creation of the Belgian State. It came into *de facto* existence as the result of civil war. But if the Great Powers, headed by Great Britain and France, had not agreed to make arrangements to ensure its *de jure*

continuance, the result would have been a European war, which would probably have ended in the partition of Belgium between the belligerents. In so far as the methods employed so effectively localized—one might say parochialized—war it would be pedantic to deny the creation of Belgium a place in the history of peaceful change; even though in the process of achievement Great Britain and France placed an embargo on Dutch shipping and a French army besieged the citadel of Antwerp. Somewhat analogous was the creation of Albania as an independent state in 1913 as a direct consequence of the War of the Balkan League against Turkey. If the Great Powers headed by Britain and Germany had not insisted upon delimiting its boundaries and imposing their will upon Serbia and Montenegro the Great War would have been precipitated by a twelvemonth.

Another difficult case is presented when, in consequence of a war, changes take place in the status of territories which were not belligerent. In 1859 the Franco-Piedmontese alliance against Austria brought various states of central Italy under the sovereignty of Victor Emmanuel. Revolution in support of such union had in fact broken out in Tuscany when war, though certain, had not yet been declared. But they would have achieved no result without the defeat of Austria. On the other hand, the actual process of change by spontaneous and almost unanimous plebiscite was as peaceful as could be desired. Very similar was the return through plebiscite of northern Schleswig to Denmark after the German defeat in 1918; though in this case the non-fulfilment of Article IV of the Treaty of Prague (1866) provided a quasi-juridical base<sup>1</sup> for the provision in the Treaty of Versailles.

If such may just be brought within the fold of peaceful

<sup>1</sup> Quasi-juridical only, because the two Powers who signed the treaty agreed to the abrogation of the clause at the time of the Austro-German Alliance in 1878. Presumably, therefore, it became null and void and had been recognized as such by Denmark in a note to Germany in 1907. The Danish Government did not invoke the Treaty of Prague in 1919.

change it is impossible to allow the term to the creation of new states out of belligerent populations, which have so curiously changed the map of Europe since 1918. They must be excluded even though, as in the case of Czechoslovakia, the new *de facto* government took over and functioned on the collapse of the old with admirable order and precision. Where, however, changes of boundary took place by peaceful means after the establishment of the new state there seems no valid reason for exclusion; as, for example, the transfer of the Burgenland from Hungary to Austria.

Finally, it has happened in the event of a European congress after a general war that certain of the Allied States found it convenient or politic to make changes in their respective boundaries. The Treaty of Vienna together with its numerous annexes is full of such exchanges, particularly among the states of which the German Confederation was composed. It cannot, however, be claimed that these transfers as a rule illustrate any important principle, except sometimes that of compensation, or deserve a detailed study. A singular instance of an exchange enforced by one ally upon another at the conclusion of a war can be found in 1878. Russia, after invoking the aid of Roumania when she discovered that the task of beating Turkey presented unexpected difficulties, insisted upon depriving her ally of that portion of Bessarabia which had been taken from Russia in 1856, compelling her to receive in exchange the marshes of the Dobrudja largely inhabited by Turks and Bulgars with an indefensible frontier. Britain and France, the interested signatories of the Treaty of Paris, paid no attention to the Roumanian appeals.

This attempt to explain in very general terms the meaning of the adjective 'peaceful' must now be followed by a definition of the noun 'change'. It is convenient to limit our study to the relations of civilized Powers with one another and not to deal with the ambiguous methods, generally tainted with force or fraud, by which European

governments modified the independent status of savage potentates by peaceful penetration, the creation of spheres of influence, or protectorates.

Neither is it proposed to examine purely economic changes, though it must be admitted that their indirect and ultimate political importance was often great. Every one knows that the creation of the Prussian Zollverein paved the way for German unity under the Hohenzollerns, though this customs union would not have been so effective but for the territorial position which Prussia had already gained over the main routes of north Germany. Similarly, the fact that Germany had a customs union with and controlled the railways of the Grand Duchy of Luxembourg facilitated the violation of that state's neutrality in 1914.

Generally speaking, then, the changes in question are political changes dealing with transfer of sovereignty or an alteration of the existing status of a state or area.

It is obvious that a transfer of sovereignty may be so effected as to produce several quite different and indeed contradictory results. A sovereign state may cease to exist and be merged in another state by the wish of its inhabitants without preserving a shred of its original status. Such was the process by which Tuscany and the other central Italian states were merged in Piedmont in 1860, while as a consequence of the merger the royal house of Piedmont became kings of Italy. On the other hand, a group of states, while forming themselves effectively into a single sovereignty, as happened with the creation of the first German Reich in 1871, may continue to keep their existing boundaries and their existing heads, together with certain attributes of sovereignty.<sup>1</sup>

Or again, a sovereign state while entirely losing its independence may be guaranteed a peculiar position by

<sup>1</sup> e.g. to maintain representatives at foreign courts and, in the case of Bavaria and Württemberg, their own posts, telegraphs, and railways and, for Bavaria, the command of the army in time of peace.

treaty within its new absorbing sovereignty. Thus the city-state of Genoa in 1815, while given to Piedmont by the Treaty of Vienna, preserved—on paper at least—many valuable rights as a free city.<sup>1</sup>

Another common method by which sovereignty was peacefully transferred or merged was by marriage or inheritance.<sup>2</sup> Few except historians are probably aware of the extent by which many of the great European states were consolidated and augmented by dowries; though every one is—or used to be—acquainted with the couplet which celebrated the connubial cementing of Austria:

*Bella gerant alii, tu, felix Austria, nube;  
Nam, quae Mars aliis, dat tibi regna Venus.*

This process of acquisition has now become obsolete, partly because of the jealous scrutiny to which any threatened change in the balance of power is subjected. Members of the ruling house of any important European Power are generally excluded by arrangement or treaty from ascending any new or vacant throne. In the case of Greece it was expressly provided that the Bavarian and Danish candidates should not be capable of holding their new throne together with that of the country of their origin. But, in any case, such a procedure became obsolete with the decay of the territorial theory of monarchy, which regarded the transfer of the sovereignty over souls as no less natural and proper than that of a sum of money.

By the contrary process a new sovereign state may be created by the dismembering of one already in existence. This process may be accomplished by the ideal method of uncontested secession, of which the separation of Norway from Sweden in 1905 appears unfortunately to be the

<sup>1</sup> Conversely a town which possessed no unusual privileges may be given a semi-sovereign status, e.g. Cracow in 1815 and Danzig in 1919, though the process in the latter case is certainly not an example of peaceful change.

<sup>2</sup> Somewhat analogous was the practice not uncommon in the ancient world of bequeathing a state by will to another state; as for instance Attalus left his Kingdom of Pergamum to the Roman Republic.



sole exemplar. The far more numerous instances where such success was won by revolution alone are of course outside our limits. It has already, however, been suggested that the case of Belgium might be included; for the revolution which was the cause of its *de facto* separation from Holland would almost certainly have been incapable of creating and maintaining the new state, without an agreement on the part of the Powers to settle the conditions of a permanent independence. The establishment of Bulgaria as autonomous and of Serbia and Roumania as independent principalities by the Treaty of Berlin in 1878 present certain analogies. But it may be argued that in these cases the end, i.e. the new status, had been directly achieved by the Russian victory over Turkey, and that the exact settlement of their boundaries together with the provisions for the protection of minorities<sup>1</sup> is the only part of the process which can properly be described as peaceful.

From changes which involve the creation or extinction of sovereignty we pass to questions of disputed sovereignty. In the days when maps either did not exist or were constructed on a wholly unscientific basis such ambiguities were exceedingly common. In the Middle Ages the issue, if not decided by the sword, was occasionally left to the arbitration of the Pope.

More recently the fault has generally lain in the inadequate geographical drafting of boundaries in treaties, or in their lack of clear and precise expression. Louis XIV gave Europe a sinister lesson in the danger of vague drafting when he set up his *Chambres de Réunion* to decide what were the dependencies of the Imperial cities of Alsace ceded to him by the Treaty of Westphalia. His jurists had no difficulty in finding plausible reasons for annexing almost the whole of that province. The innumerable changes of frontier provided by the Treaty of Vienna gave work for

<sup>1</sup> Such provisions were first laid down in the Treaty of Vienna and were extended and systematized in the Treaty of Berlin.

years to a multitude of boundary commissions. A study of the first volume of Hertslet's *Map of Europe by Treaty* will show that in some cases the agreed rectifications of frontier were fairly considerable.<sup>1</sup> The most important modern frontier disputes have arisen between Great Britain and the United States over the southern frontier of Canada. Here the cause lay partly in deliberate treaty omissions—for the Treaty of Ghent made no attempt at a general settlement, with wisdom, as the event was to prove—partly in the fact that the regions claimed by Maine and Oregon had been very imperfectly surveyed, and partly because neither Canada nor the United States had for nearly a generation the desire or the human material to occupy effectively the disputed areas. The controversy, however, was fanned to a dangerous heat in the imperialist America of the 'forties before it was finally settled by boundary commissions. The later dispute between Canada and the United States about the Alaska boundary was settled by arbitration, as was also the vexed question of the boundary between British Guiana and Venezuela which President Cleveland tried to prejudice by his peremptory and bellicose message. It is noteworthy that no boundary dispute or question of contested jurisdiction has led to war between European states since 1815, though such an issue was averted at Fashoda in 1898 only by the French withdrawal; while preliminary hostilities had actually begun between the Greeks and Bulgars in 1925 over a frontier incident in Macedonia before the successful intervention of the League of Nations.

Since 1815 the peaceful exchange of territory between states has been curiously rare. In fact the shortlived arrangement of 1846 whereby the petty sovereigns of Parma, Modena and Lucca redistributed their respective

<sup>1</sup> One small area, the so-called Neutral Moresnet on the borders between Belgium and Prussia, was actually left in a position of undefined allegiance until 1919, when the Treaty of Versailles assigned it to Belgium. It had previously been jointly administered by the two Powers.

areas for their greater convenience appears to be almost the only instance.<sup>1</sup>

The cession of territory by one state to another has been not uncommon, but it has received its equivalent in some other form. Nice and Savoy were ceded to France by Piedmont in 1860 for a territorial equivalent, it is true, but which was found not in France but in Italy at the expense of Austria and her client princes, while the rise of a new Great Power on the south-eastern border of France not unnaturally determined Napoleon III to claim a more defensible frontier. Great Britain ceded Heligoland to Germany not for territory itself but for the transfer of German protectorates over Zanzibar and elsewhere. The African territory handed over to France at the establishment of the Entente was in equivalence of the French recognition of the British position in Egypt and the partial abandonment of the claims of their fishermen in Newfoundland which had been continually disputed since the Treaty of Utrecht. Similarly, the transfer of a portion of the French Congo to Germany in 1911 was in consideration of the recognition of the privileged position claimed by France in Morocco. The cession by Great Britain of her protectorate over the Ionian Islands to Greece is remarkable in that there was no provision by treaty for any reciprocal advantage, except the neutralization of Corfu,<sup>2</sup> a precaution to avoid the harbour of that island being used as a naval base to Britain's disadvantage, and the maintenance of existing commercial conditions. But, as has been already pointed out, it cannot be considered for that reason to have been simply a gesture of benevolence.

<sup>1</sup> There was also an arrangement between Turkey and Montenegro in 1880 with the assent of the other signatory Powers of the Treaty of Berlin to modify by mutual concessions the line traced in 1878, the Corti Compromise, which was not finally adopted.

<sup>2</sup> Curiously enough, this provision was broken by Great Britain herself in conjunction with the other two Protecting Powers of Greece, France and Russia, in 1915, when the island was taken over as a recuperating base for the remnants of the Serbian army.

The actual procedure necessary for ensuring the validity of a transfer of territory depends of course upon the constitution of the country affected and the political considerations. It is, for instance, extremely unlikely that any British Government would make any cession without parliamentary ratification, though the Crown is held to have power by prerogative to do so, at least in certain cases.

The methods employed, however, vary widely from simple treaties of cession to agreements to abide by the findings of boundary commissions or arbitrators, sales or cessions contingent on the result of a plebiscite. The United States has been the great purchaser of territory during the last century. This is natural, as it was desirous of bringing under its sovereignty all areas in North America of which their owners were ready to dispose, in order to avoid the danger of a transfer to some other European Power. As it possessed no land, which it was ready itself to hand over in compensation, a cash equivalent was the natural offer.

To the objection that the transfer of human beings like chattels with the land for a sum of money is anachronistic and undemocratic, it may be replied that the territories in question such as Louisiana, Florida, and Alaska were undeveloped and exceedingly thinly populated, and that where native populations have been concerned European states have never taken any pains to discover their desires before completing a transfer. It is to the credit of the United States that money has been so often paid for territory which could have been taken by force without any risk. Spain, for instance, was totally unable to defend Florida, or the Cherokee Indians their district of Georgia, or Denmark the Virgin Islands (though in the latter instance forcible seizure might have led to serious difficulties with Great Britain).

The holding of a plebiscite as a preliminary condition of transfer, which has become so common in modern times, is a direct offspring of the French Revolution which

insisted upon, and itself put into practice, 'the right of populations to decide their own destiny', or in the phrase which was on the lips of the world in 1918, 'the right of self-determination'. Nor was this method always confined to peaceful change, but was an adjunct to the arbitrament of war. The French Convention held plebiscites in the conquered districts of Savoy, Nice, and Belgium. The population of Venice was consulted before the transfer of that province to Italy by Austria after her defeat in 1866.<sup>1</sup>

It has been cynically remarked that the result of a plebiscite never failed to be that desired by its promoters. It is indeed true that before the era of universal education the military and civil resources of a centralized state could by propaganda and veiled force exercise a very powerful pressure. In Savoy and Nice in 1860, for example, the substitution of carefully selected pro-French native officials for Piedmontese before the voting was held could have left little doubt in the minds of the voters as to what result they were expected to produce. But there is no reason to suppose that any nineteenth-century plebiscite falsified the desires of a majority of voters, though it doubtless affected the size of that majority. It is noteworthy that, of the plebiscites held in Germany as a consequence of the 'Treaty of Versailles, those in Marienwerder and in Allenstein and the second zone in Schleswig went decisively in favour of the defeated Power and that in Silesia to an extent which seriously alarmed the French and made it necessary for the League of Nations to fix a definitive boundary which only partially embodied the results of the voting. It was only in Eupen and Malmedy, the small districts ceded to Belgium by Germany, that the Allied and Associated Powers descended to the unworthy and farcical expedient of allowing inhabitants to register protests

<sup>1</sup> Technically this might be considered a case of peaceful change, as the Emperor of Austria ceded Venice to Napoleon III who was not a belligerent. The plebiscite was thus formally held to make the peaceful transference from French to Italian sovereignty.

against the cession only after it had taken place. The latest of all such plebiscites, that in the Saar Territory (1935), proved in its organization a model of fairness and efficiency. That it was unable to cope entirely with the menacing propaganda of the Nazi partisans was its misfortune, not its fault.

The only instance in which a British Government appears to have been influenced by popular sentiment in making a transfer of territory is in the cession of the Ionian Islands, where Article 1 of the treaty begins:

'Her Majesty . . . desiring to realise the wish expressed by the Legislative Assembly of the United States of the Ionian Islands, that those Islands should be united to Greece, has consented . . .'

A new form of peaceful change, that of a wholesale transfer of populations, has come into prominence since the Great War. It is illustrated on a great scale by the arrangements made between Turkey and Greece for the exchange of their Christian and Moslem subjects. For a full discussion the reader is referred to C. A. Macartney's *National States and National Minorities*.<sup>1</sup>

It sometimes happens that a change in the international status of a territory or area may be just as important as a transfer of sovereignty. Indeed, such a change may be in all respects, except form, its equivalent, so that when a change of sovereignty actually occurs it makes little or no difference. For instance, the occupation and administration of Bosnia and Herzegovina and of Cyprus by Austria-Hungary and Great Britain respectively in 1878 did not legally impair the sovereign ownership of these territories by the Porte. In reality it was generally recognized that as no time limit was imposed in the case of Bosnia and an improbably contingent time limit in the case of Cyprus,<sup>2</sup> they had definitely passed into the effective possession of

<sup>1</sup> Oxford University Press. 1934.

<sup>2</sup> The Cyprus Convention stipulated that the island should be returned to Turkey if Russia restored her Asiatic conquests of 1878, Kars, Ardahan, &c.

the two Powers concerned. It is true that the Austrian decree of annexation in 1908 provoked an acute diplomatic crisis. But this was because of the illegal and provocative method by which it was accomplished, not because it actually altered the powers already possessed by Austria-Hungary in the provinces. Similarly, the granting of a separate administration to Eastern Roumelia by the Treaty of Berlin in fact rendered inevitable its union with Bulgaria six years later, though the object of that provision had been expressly to prevent that very result. In much the same way Moldavia and Wallachia were carefully organized as separate provinces in 1858, but as they were left autonomous from Turkey it was easy for them first to create one united autonomous principality, which in due course reached its goal of independence as the Kingdom of Roumania. It is indeed often true of this international journey that '*Ce n'est que le premier pas qui coûte*'.

On the other hand, a sovereign state may be given a different international status without the infringement of its sovereignty. Such, for example, was the experience of the Swiss Confederation when its neutrality was guaranteed in 1815. It might be said that the Grand Duchy of Luxembourg underwent five simultaneous changes of status in 1867 as a consequence of the Treaty of London. It was declared no longer to have any connexion with the German Confederation, the Prussian garrison which had held the citadel since 1815 was withdrawn, the country was itself demilitarized, it was neutralized, and finally placed under a collective guarantee of the Great Powers.

Similarly, a particular area of a given territory has received a special status, especially that of demilitarization, without being withdrawn from its existing sovereignty. Such were the restrictions placed on the districts of northern Savoy, Chablais and Faucigny by the Treaty of Vienna with the object of fortifying the neutrality of Switzerland. These obligations were taken over by France when she acquired the sovereignty over Savoy in 1860. So, too, the

Island of Corfu was neutralized when handed over to Greece in 1864. The shortlived neutralization of the Black Sea in 1856 was an extension, though scarcely a peaceful one, of the same principle to a marine area; both in its intentions and failure it invites a close comparison with the demilitarization of the Rhineland in 1919. The most fruitful and permanent result of a demilitarizing agreement was the strict limitation of war vessels on the Great Lakes between Canada and United States after the Treaty of Ghent.

These changes which we have just been considering are in their nature restrictive. An opposite intention is displayed by such conventions as those dealing with the navigation of international rivers. It is a chastening reflection that such useful legislation has been normally possible in Europe only after the termination of a great war and has therefore tended to be applied only so far as the victors thought to be desirable or convenient. The congresses of Vienna, of Paris, and of Versailles have all contributed piecemeal to the freedom of navigation of various European rivers. Similar in intention, but freely, negotiated in time of peace, are the conventions which regulate the status of and the passage of vessels through the Suez and Panama canals. Here we are touching on the boundaries between peaceful change and international organization. Such international conventions as those which regulate postage, telegraphs, and cables, and which have been so fruitfully multiplied by the International Labour Office during the last fifteen years, are rather stages in the social and economic progress of the world, as a unit, than peaceful change in the definition which we have assigned to it.

As it is, this introduction shows that the area covered is indeed a sufficiently wide one for investigation. It includes a gradation of peacefulness from amicable settlement to arrangements made under the shadow or as the indirect consequence of war. It shows how very varied is the character of the changes included within our category,



by what diverse methods and through what a number of international agencies or influences they can be brought to accomplishment. An examination of the century 1815–1914 certainly justifies the claim that the Concert of Europe, an entirely *ad hoc* body, except for the period 1815–22,<sup>1</sup> though unable to prevent major wars did very valuable work, often unappreciated or forgotten, in initiating or imposing solutions for difficulties which, if left to themselves, would have led to wars capable of producing a general conflagration. Doubtless the arrangements made were often based rather on expediency than on justice, and involved the exercise of coercion more or less veiled. Yet it is obviously preferable that pressure, if it must come, should be collective rather than individual in its origin. The Great Powers, while by no means a disinterested or impartial body, aimed at preserving the peace of Europe by methods which were far from being exclusively cynical. It is indeed largely due to their efforts that the sphere of peaceful change was so largely extended during the nineteenth century. The more truly detached and the more truly representative the body which is entrusted with the tasks of solving such difficulties as the disputants themselves are unwilling or unable amicably to settle, the greater will be the readiness to accept such arbitration, and the more confident the belief in the fairness of its decisions. It is even possible that such a body might be able in the future to take the initiative in suggesting alterations of the *status quo*, whether political or economic, instead of waiting to settle disputes already embittered and compromised by private controversy. It is only by studying and realizing how much was done by a very informal and imperfect system of collective action in one continent before the war that it is possible to forecast what might be done in the

<sup>1</sup> During this period the Concert had a kind of elementary constitution in Article VI of the Quadruple Alliance, which, though never repealed, ceased in effect to operate as a regular system after the break-down of the Congress of Verona in 1822.

future by a League of Nations securely based on the foundations of universality and impartiality.

Finally, it remains to determine the most convenient method of analysing this problem in detail. It is proposed first to deal with all cases involving a change of sovereignty or a transfer of territory and then with those which imply modification of status. Within these general limits there is no method which does not involve the necessity of some cross-division. If, for example, we grade all the changes under review in accordance with the degree of their peacefulness, it would mean a piecemeal and scattered account of the methods of negotiation involved and of the solutions achieved. A similar objection would apply to any analysis based on the very important distinction between negotiations confined to the states directly concerned, and those brought to a conclusion only through the employment of good offices, arbitration, pressure, or compulsion by other states, either acting individually or as members of an international system. Again, if we take the character of the disputes themselves as a criterion which is perhaps the most logical way, it is impossible to classify the solutions. For of course the same solution may be applied to entirely different types of dispute. On the whole, however, it seems least inconvenient to conduct the inquiry by this last method, making a subdivision where required in each chapter, between those arrangements arrived at with or without any intervention on the part of states not directly interested in the dispute.

## CHAPTER II

# DISPUTES ABOUT BOUNDARIES AND SOVEREIGNTY

### I

THE division implied in this chapter-heading is arbitrary and logically unreal, for every boundary dispute must also involve a claim of either party to sovereignty within the contested area. It is, however, defensible from the point of convenience. A boundary dispute may be defined as one involving an uncertainty about boundaries which it was the intention of the parties definitely to settle, owing its origin to imperfections or inaccuracies in the maps employed or to an ambiguity or lack of precision in the drafting of the instrument of settlement. Contested sovereignty, on the other hand, arises where the title to the land in question is itself uncertain, where a prior claim may be disputed on the ground of non-effective occupation, dereliction, and so forth. The latter is, or logically should be, the graver form of controversy, since the intention of treaties which prescribe a boundary is to settle the question. It is normally, though not invariably, due to their imperfections rather than to their deliberate evasiveness that a controversy arises. It is natural if the end, i.e. settlement, has been willed, to will also the means of making it effective. Disputes about sovereignty, on the other hand, are often based on the flat assertion of each of the contending parties that his claim should prevail, and the basis of the controversy lies rather in *raison d'état* than in justice or equity. It may be assumed that both these types of dispute, which have been in the past such frequent and often such bloody episodes in history, will grow progressively rarer. A very large proportion of the world's surface has now been surveyed and the results transferred to adequate maps. It will therefore be generally possible to

give exhaustively accurate descriptions of boundaries which can be supplemented by agreed lines on a map annexed to a treaty. The only serious source of error should now lie in the incompetence of the draftsman or the inadequacy of a particular language to make a point clear. Some authorities hold that the disuse of French as the standard diplomatic language has automatically increased the margin of error in the drafting of treaties. Moreover, as almost every point on the world's surface is now under the recognized dominion of some state, there are no longer the tempting array of *terrae nullius*, tentative spheres of influence, semi-occupations, &c., which excited so many games of competitive grab among the Powers a century ago. It is curious to think that it is no longer a period since Great Britain annexed New Zealand, thus narrowly forestalling the French. If, then, we may class these controversies as normally an early development in the history of states, it is not surprising that Europe has been practically free from them since the Vienna settlement. It is true, as has been already mentioned, that the treaty itself, which redistributed territory over half of Europe, provided material for a large number of boundary commissions. It would, however, be waste of time to trace the minute scale of their unexciting activities which involved at the most the transfer of a few hamlets and an odd thousand or so of population.

## II

It is naturally to the two American continents and to the United States in particular that we must turn to examine boundary controversies on a large and spectacular scale.

It took 120 years finally to determine the limits of the United States, from the Treaty of Paris, 1783, to the decision of the arbitrators on the Alaska boundary in 1903.

This was due to two main causes. First the actual northern boundary with Canada was left very vague in 1783, partly because maps were bad, partly because the

drafting was slipshod, and partly because neither side had renounced the hopes of further acquisitions in the future within the no-man's-land of geographical ambiguity. Secondly, the United States acquired from France, Spain, and Russia vast indefinite titles over the whole western area with the transfers by sale of Louisiana, Florida, and Alaska. In fact the vague extent of these territories together with the growing and aggressive assertion by the inhabitants of the United States as an article of faith that 'manifest destiny' pointed the way to their complete control over the whole continent bring these latter disputes rather under the category of contests about sovereignty than about genuine boundaries. They are part of the struggle for supremacy in North America, which was fought out stage by stage during the nineteenth century, the weapons used against Great Britain being those of diplomacy, but against Mexico and Spain those of war.

The questions arising out of the Treaty of Paris were finally settled by the Ashburton Treaty of 1842. Two intermediate stages may be marked in this progress, the Jay Treaty of 1794 and the Treaty of Ghent, both of them implemented by the work of judicial commissions. Although the way had been prepared for regular negotiations between the two countries by the accrediting of a British minister to Washington in 1791, a courtesy hitherto refused by Great Britain, and at once eagerly reciprocated by the United States, it was the outbreak of the French Revolutionary Wars which hastened and facilitated a settlement.

Washington desired to maintain the neutrality of the United States. He had preserved it from the danger of being dragged into the French side when Genêt with his mission in 1793 did everything in his power both to compromise the United States and to appeal to the sympathies of its people over the head of the government. He had also been barely successful in 1794 in preventing the exercise by the British fleet of its maritime rights in their more

extreme forms from precipitating an undesired rupture. But it was evident that the situation would soon become intolerable if it did not improve. He therefore sent to London John Jay, the chief justice, to present the whole American case, and to settle, if possible, the grievances of the United States arising out of the war together with all the points left over from the Treaty of Paris.

Although the course of the war in 1794 was far from favourable to Great Britain and her Allies, and did not invite the creation of a new enemy, Jay's attitude convinced Lord Grenville that he feared above all a British declaration of war. It seems true that the American negotiator deserves partly at least the reproaches heaped upon him at home for not having taken sufficient advantage of the international situation. The American case had, however, been already weakened by the imprudent avowal of Hamilton to the British minister that the policy of the government was 'to avoid entangling itself with European connections'. Grenville, who had already received this information, drew the correct inference that the United States was unlikely to join the armed neutrality of Baltic States sponsored by Russia if the British practices on sea were maintained. But although he obtained no substantial satisfaction on the question of British maritime rights, he got important commercial concessions, and, what is relevant to our present inquiry, set up mixed boundary commissions with judicial powers, a procedure most fruitful in precedents for the settlement of such disputed boundaries as were not arranged in the body of the treaty itself. The most important of the latter were the seven military and fur-trading ports in the north-west which Great Britain had retained contrary to the provisions of the treaty in 1783. The ostensible reason for this retention was the alleged prior infraction of other articles by the Americans. It appears, however, that the pressure of Canadian opinion was in reality decisive. The British Government hoped by this means to preserve for Canada the Ohio border, to

which that province had been extended in 1774, together with the exploitation of the fur trade within that rich region and the control of the Indians settled there. But such a violation of the treaty, however excused, was certain to ulcerate the relations between the two countries which either government at least was desirous to improve, and the British Cabinet agreed to an immediate evacuation. The geographical points which the treaty had left in genuine and indeed inevitable doubt, such as the location of the source of the Mississippi, were referred to the judicial commissions. While the largest contested area, the Maine frontier, had to wait for settlement until 1842, this pacific machinery was very valuable as a precedent for sensible and dispassionate settlement.

The next twenty years, however, showed a progressive retrogression from these amicable negotiations, and by 1812 the two nations were again at war. Though the cause of the war lay in the system of retaliatory blockade set up against Napoleon by the British Orders in Council, it was evident that a contributory reason for hostilities lay in the fact that neither Power was yet ready definitely to acquiesce in the frontiers of 1783. The Americans had the intention of annexing Canada, while the Canadians hoped to extend their frontier to the Ohio, and to settle in their favour the still disputed Maine territory. The ignominious defeats which stopped dead the invasion of Canada finally convinced American opinion that if Canada was to be absorbed it must be by peaceful penetration and enticement, not by force of arms. Though there is little doubt, even on American admissions, that a vigorous prosecution of the war by Great Britain would have brought disaster on the United States, public opinion at home had been so much impressed by the enterprising efficiency of the American navy that it was felt most undesirable to leave it as a perpetual thorn of potential hostility across the Atlantic.

On the whole, therefore, more permanent appeasement issued from this unfortunate and unnecessary war than

from the peaceful negotiations of 1794. It was lucky for America that her whole delegation at Ghent, and Gallatin a Swiss by origin in particular, showed such great diplomatic capacity that it was impossible for the Americans to say, as they so often did, they had been outwitted in treaty-making by British guile. It was of course fortunate for them that the ablest British diplomatists, including Castlereagh, were tied by their duties at the greater Conference of Vienna.

The British at first put forward claims which could have found acceptance only if their opponents had been definitely beaten, but in the end the debate was as between equals and the settlement on a basis of equality. The treaty as a whole being the direct issue of war does not concern us. In any case, having been concluded in haste and having deliberately left the chief points in dispute for future settlement, it is in itself rather a starting-point than a stage towards agreement. It followed, however, the Jay precedent by providing for mixed commissions, which successfully dealt with two frontier problems: the delimitation of the St. Lawrence area, and the long disputed location of the source of the Mississippi. Two other important arrangements, the Rush-Bagot agreement for the limitation of armaments on the Great Lakes and the convention on the Newfoundland fisheries, will be dealt with in appropriate chapters elsewhere.

Yet, as modern American writers frankly admit, the Treaty of Ghent might have proved no more than an uneasy truce, precursor of periodic wars, had it not been for the attitude of Castlereagh. Recognizing the United States clearly as a potential Great World Power he set the precedent of treating its representatives on a footing of complete equality in order, in his own words, 'to smooth out asperities between the two nations, and to unite them in sentiments of goodwill as well as of substantial interest with each other'. His credit is the greater because the American Secretary of State after 1817, the famous J. Q. Adams,



whose foresight into the destiny of the United States was at that time probably unique, urged his claims with a harshness, enhanced rather than mollified by the gracious demeanour of Castlereagh, which was suspected as a snare to catch the simple Yankees.

It must be remembered that in spite of all the work of the boundary commissions there was still much to do. The Maine–New Brunswick frontier on the extreme north-east was still in the air. Moreover, new problems had been created by the purchase of Louisiana from France (1803) and Florida from Spain (1819). Claims were thus created both against Mexico, which were finally enforced by war, and against Great Britain, with reference to the south-west boundaries of modern Canada. The northern limits of Florida had been definitely fixed by the treaty with Spain at the 42nd parallel. This left Great Britain and the United States with an enormous bone of contention as to the frontiers of Louisiana, which the Americans claimed not so much on juridical grounds as on the popular revelation of manifest destiny to extend up to the southern boundary of Alaska still under Russian sovereignty. It was obvious, however, that the resources of American and Canadian populations would for some time be wholly insufficient to settle any considerable area of this vast prize. Consequently the Convention of 1818 arranged that the whole of Oregon west and north of the Rocky Mountains should be free and open to the vessels, citizens, and subjects of both Powers for ten years without prejudice to the claims of either. In 1824 Russia, largely influenced by the entente between Great Britain and the United States, which had produced the Monroe doctrine (1823), with its veto on any further colonization by European Powers on the American continent, consented to sign a treaty fixing the southern limits of Alaska at the parallel  $54^{\circ} 40'$ . Consequently the no-man's-land of Oregon had been reduced to the treaty-defined area between  $42^{\circ}$  and  $54^{\circ} 40'$  before the decennial period of compromise had expired.

From the British point of view there were obvious arguments both for and against renewal. Postponement is often the best temporary policy for a diplomacy which has no intention of proceeding to extreme measures to enforce its claim. Any risk of a rupture with the United States would have been most inconvenient to Great Britain occupied abroad with the problem of Greek independence, with Canning's manœuvres to obtain a commercial preponderance in the newly-fledged republics of South and Central America, and at home with the crying demand for Catholic emancipation. On the other hand, the expansion of the United States westward, and its population both by natural growth and by immigration so utterly overshadowing that of Canada,<sup>1</sup> made it certain that exploration, occupation, and settlement would weigh heavily in the American balance when the final day of reckoning came. In effect a compromise was made. The Oregon agreement was again renewed in 1827 for an indefinite period, but subject to abrogation at a year's notice, while at the same time the whole hoary Maine-New Brunswick dispute was referred to the arbitration of the King of the Netherlands, as the boundary commission had been unable to recommend any agreed report. The King did not make his award until 1831, and it proved unacceptable to the United States, who believed him to be under excessive British influence. As he had by now lost Belgium the Senate declined to ratify the award under the pretext, quite unjustified in international law, that he was no longer the same juridical person to whom the task of adjudication had been submitted in 1827.<sup>2</sup> Actually they would have gained

<sup>1</sup> Between 1820 and 1840 the United States grew from 9,638,000 to 17,069,000 while the population of Canada in 1840 was barely 2,000,000. Strictly speaking, Oregon was not the concern of Canada but of the Hudson's Bay Company, which ceded its territory to the federation in 1870 in return for a subsidy.

<sup>2</sup> It is doubtful, however, whether he did not exceed the definition of his powers as arbitrator, for his reference was to decide between the British and American claim, and his actual award was a compromise between the two.

by acceptance, for he gave the United States two-thirds of the contested area against the seven-twelfths which they won by the Ashburton Treaty in 1842.

Many manifest signs during the next decade showed that the question was rapidly growing over-ripe for a peaceable settlement. Maine, which had been established as a separate state in 1820 after its separation from Massachusetts, took an increasingly truculent view of its rights. Timbermen came to bloody disputes within the contested area, the militia was called out, and large sums voted by the state legislature. Moreover, the United States itself had reached what an American historian aptly describes as 'the awkward age': sprawling, bullying, self-righteous, and self-assertive, regarding claims as essentially just simply because they had been formulated and popularized. Again, the rebellion of 1837 in Canada strained both American and British patience. Many Americans hoped for its success as a prelude to annexation by the United States; some adventurous sympathizers in New York State hoped to force the hands of the government into intervention by staging an unofficial invasion of Canada from Niagara. The British retaliated by seizing and burning within American waters the sloop *Caroline* which supplied them. Finally the British claim to the right of search in order effectively to put down the slave trade was an added sore. If we add that Palmerston had constantly refused any settlement of the boundaries, and had restrained none of his proverbial vigour of language in the composition of his American dispatches, it can be realized how grave was the danger of a drift into war through a combined accumulation of mutual disputes and animosities.

It was providential for a peaceful settlement that Webster's appointment as Secretary of State coincided with the advent to power of Peel's Conservative Ministry in which the cautious and pacific Aberdeen held the post of Foreign Secretary. Both sides recognized that it was no time for the leisurely exchange of inconclusive notes. The

local situation had been precariously papered over by an arrangement of 1839 by which the contested area had been partitioned for provisional administration without either side having abandoned any of their claims. Any renewal of affrays between the rough neighbours might degenerate into war between the two countries in spite of the close economic ties so important to either.<sup>1</sup> The credit of the initiative belongs to Webster, who proposed that the negotiations should begin *de novo* and be freed from the accretion of claims and counter-claims which had accumulated round the ambiguous phrases of the original treaty of 1783. He was in fact hinting at a compromise based on goodwill and equity. The success of the mission which the British Government determined to send to Washington was secured by the choice of Alexander Baring, Lord Ashburton. The discriminating care shown in his selection was amply justified. Ashburton was not a *diplomat de carrière* but an experienced legislator, who had married an American wife, was personally known to Webster, and wrote to him on announcing his appointment, 'the principal aim and object of that part of my life devoted to public objects during the thirty-five years that I have had a seat in one or the other House of Parliament has been to impress upon others the necessity of, and to promote myself, peace and harmony between our countries.'

The Maine boundary was placed first by his instructions from the British Cabinet among the various controversies which required an immediate remedy, though owing to Canadian pressure his hands were partially tied by restrictive conditions. In particular it was thought essential to maintain a military road between Quebec and Halifax with an adequate southern margin. Webster and Ash-

<sup>1</sup> At this period the United States was Great Britain's best customer, taking some 15 per cent. of British exports, while Great Britain drew the largest proportion of her imports of raw materials, especially cotton, from them.

burton acted as business men determined to effect a reasonable and workable compromise,<sup>1</sup> and being weighty and ready to bear large responsibilities naturally succeeded. Of the twelve thousand square miles disputed for two full generations, America received seven thousand and Canada five, nor has any subsequent inconvenience been discovered in the tracing of that conventional line.<sup>2</sup>

The treaty suffered both in the House of Commons and in the Senate that salutary and reassuring discipline of attacks from extremists. Its passage through the legislature of both countries was helped by an extraordinary coincidence. Both governments produced from the recesses of their archives a map which appeared to sustain their opponent's case, and about which they had hitherto preserved the utmost secrecy. The American map was of French origin discovered at Paris with a red line drawn upon it which substantially followed the British claims. It was thought, though no proof existed, that this was the map handed to Vergennes with Franklin's own trace of the boundaries of the states as settled by the treaty. This was shown at the critical moment, with the desired effect, both to calm the Maine legislature and to wobbling senators. The British map, called 'The King's Map' because it had belonged to George III, was undoubtedly the more compromising of the two, for it bore a line marked by the annotation 'boundary as described by Mr. Oswald' which precisely bore out the American contention. As Oswald was one of the American commissioners of 1783, and as there was no indication on the map of any British disagreement with the frontier thus delineated, it is not surprising that when Panizzi, the librarian of the British

<sup>1</sup> Ashburton was a partner in the famous banking house of Baring, whilst Webster had held a similar position in the American house of Biddle, the bank of the United States.

<sup>2</sup> The United States was also confirmed in the sovereignty of a small area farther west on which a fort had been built, though it was agreed that it had been incorrectly awarded owing to the mistake of an earlier boundary commission in tracing the 45th parallel.

Museum, unearthed it in 1839 Palmerston promptly stowed it away in the Foreign Office. It was in fact so carefully guarded, with the love of unnecessary secrecy morbidly inherent in the government offices of most countries, as to become available for students only in 1896.

The Oregon boundary had figured last in Ashburton's instructions and had been discussed in the negotiations, but it was not considered urgent and was shelved, partly perhaps because it was thought that the simultaneous presentation of two unpalatable compromises would be too much for the respective legislatures.

It did not, however, slumber long. Relations between the two countries remained very indifferent, as Aberdeen was supporting Mexico against the dubious methods by which American diplomacy and intrigue were engaged in promoting the nominal independence of Texas with a view to its speedy annexation by the United States. Moreover, that great movement westwards to the Pacific in the 'covered wagon' was beginning to roll in volume. Whereas in 1830 the only settlements on the Pacific were those of the Hudson's Bay Company, composed of fur traders and missionaries on and around the Fraser river, while no effective American occupation reached within 1,500 miles of the coast, by 1843 the immigrants from the Middle West were pouring along the Oregon trail. A Bill to create Oregon as a Territory of the United States actually passed the Senate in that year. The Democrats began to work it up as a popular cry for the next presidential election in 1844. A spirited alliterative slogan was invented—'Fifty-four forty or fight'. When that consciously self-dramatizing figure James K. Polk became President on an imperialistic ticket and defied Great Britain in his inaugural address (March 1845), it was obvious that agitation had reached the limits of peace. Secretly, however, both the State Department and the British Foreign Office let it be known to each other that they were willing to compromise. As the 49th parallel was already the boundary as far as the

Rockies, it was natural to use its further extension as a basis of negotiation. The only serious point at issue was whether it should continue to the Pacific or whether a southward divergence through the Straits should leave all Vancouver Island as British territory. Aberdeen's offer of arbitration in 1844 was refused by the United States, which preferred direct negotiations. Polk's public attitude was blustering and far from helpful, though he was acting on his self-expressed principle that 'the only way to treat John Bull is to look him straight in the eye . . . a bold and firm course on our part is the pacific one. If Congress falters or hesitates on their course, John Bull will immediately become arrogant and more grasping in his demands.' This might be a sound diplomatic receipt for negotiation across a table, but on his interpretation it meant whipping up popular feeling by propagandist assertions.

Oregon, it is true, meant little to British opinion except as another opportunity for the Yankees to show an offensiveness which had recently been so ruthlessly analysed by Dickens and Mrs. Trollope; but as Polk was also preparing a war against Mexico, with whose independence and that of Central America British interests were seriously concerned, his attitude alarmed such level-headed advisers as Buchanan, his Secretary of State. Yet beneath his bluster Polk desired a peaceful and rapid settlement; this was in fact the reason for his choice of Buchanan instead of the better-known Calhoun, who preferred a postponement until America was strong enough to enforce her full claims.

When Polk had been authorized by Congress to denounce the Convention of 1828 (April 1846) events moved to a conclusion with surprising swiftness. Though his message to Congress had repeated the statement that the American title 'to the whole Oregon territory had been asserted and, as it is believed, maintained by irrefragable facts and arguments', he took care when the denunciation had been authorized to express the hope that it would lead

to a speedy amicable arrangement. The Mexican war broke out on May 11th, and though Great Britain had announced her neutrality, it was obviously desirable to prevent its progress from being hindered by another acute controversy, which had already forced both sides to make troop movements. The definite proposal which resulted in the settlement actually came from the Foreign Office, which presented the President with a draft treaty embodying the final British proposals: parallel 49 to the Straits with such a deviation as would leave all Vancouver Island British, together with rights of free navigation on the Columbia river, a privilege regarded as essential by the Hudson's Bay Company.<sup>1</sup> To evade his own responsibility and to commit that of the Senate, Polk cleverly asked the advice of the latter as to whether he should conclude it. If the Senate had advised rejection it might have had to answer to the country for a renewal of the war of 1812 when the exiguous regular army was deeply committed to a still inconclusive war in Mexico. If, on the other hand, it gave an affirmative opinion, it was morally committed to ratification by the two-thirds majority which the constitution required. It naturally chose the latter, and the whole matter was concluded before the end of June. Another compromise no less fortunate than its predecessors in having no subsequent history, was added to the long Anglo-American list. Well-informed American opinion seems to be agreed that in 1846 the United States was compensated for a justifiable disappointment over the Maine settlement in 1842, since in the latter treaty she added to her territory areas north of the Columbia river which had been exclusively settled by the Hudson's Bay Company.

<sup>1</sup> After the general settlement a dispute arose as to the ownership of the Island of St. Juan which lay in a commanding position in the channel between Vancouver and the mainland. It was somewhat absurdly christened the Cronstadt of the Pacific. In 1872 the matter was referred to the arbitration of the German Emperor William I, whose decision was favourable to the United States.



Boundary questions which directly and exclusively concerned the two countries now had a long rest. In 1867 the United States acquired Alaska by sale from Russia. The boundary inherited by the former was that agreed upon by an Anglo-Russian Treaty of 1825. No trouble had been expended in clearing up the ambiguities in a barren region almost without inhabitants until the discovery of gold in the Yukon (1898). A pressing problem was at once created: mineral wealth, the nationality of the increasing swarm of miners, the ownership of the principal entrance by sea to the auriferous area were all in dispute. Lord Salisbury proposed arbitration in 1899, but the matter dragged on until 1903. Meanwhile, Roosevelt had become President after the assassination of McKinley. Young, vigorous, and self-confident—only forty-three years old when he succeeded to the supreme office—he was both a statesman and a friend of Britain. In the Alaska controversy, however, he showed his less attractive vein of the bully, the policy which was popularly known as that of 'the big stick'. Having at first refused arbitration, he later agreed to it with the almost nullifying qualification that he would not accept an award favourable to Canada but would establish the frontier as claimed by the United States. This attitude was no doubt explained by his conviction, which is shared by all more fully acquainted with the facts, that the American case was unanswerable. The commissions appointed to make the award were selected by their respective governments, three for either side; of the three British members two were Canadians. The controversial clause of the Treaty of 1825 is almost impossible to follow without a large-scale map. The gist of the matter was this: a line was to be drawn from parallel  $56^{\circ}$  northward till it intersected the parallel  $141^{\circ}$  of longitude, along the crests of the mountains parallel to the coast, following its sinuosities, but never more than ten marine leagues from it. The British claimed that the peaks nearest the coast should always be chosen as the demarcating line

with the frontier drawn across the bays between peak and peak. This would have given the Canadians the very valuable access to the heads of several of the deep anfractuositities of the coast-line. The Americans, on the contrary, contended that the intention of the clause had been to give Alaska exclusive control of the coast with all its indentations throughout the disputed area, and that its proper definition was to place the boundary everywhere at ten leagues from the coast though never more. The American argument was accepted practically in its entirety by Lord Alverstone, the Lord Chief Justice, and the award consequently went to the United States by four votes to two. Lord Alverstone was the most imposing legal figure on the commission, though the Bar has never regarded him as a great chief justice, and there is no doubt that he was genuinely convinced by the American case. The Canadians were greatly dissatisfied, and it was freely alleged that the British Commissioner had been influenced rather by political than juridical considerations. Be that as it may, the result warmed the idea of extending the permanent scope of arbitration on either side of the Atlantic, and but for the opposition of the Senate a general agreement would have been signed in the following year to refer to The Hague Tribunal every dispute not affecting territory, honour, or vital interests. In effect it had to wait until 1908.

### III

We may now turn to two similar disputes in which Great Britain was engaged with American countries, in which the United States interested themselves on the ground of their alleged rights under the Monroe doctrine. The former of these is the question, insignificant in itself, of the British claims contested with Nicaragua and Honduras over small Central American areas. It was, however, mixed up not only with Monroe's veto on any further European colonies on the American continent but with the control of any future canal through the isthmus, which

the United States were not unnaturally determined to safeguard, if not to secure.<sup>1</sup> They had already (1846) established a virtual protectorate over New Granada with exclusive rights for every kind of transit across Panama or Darien. But British capitalists speedily retaliated by inducing the Colonial Office to emphasize a vague protectorate which had existed for some forty years over the Mosquito Indians, who themselves exercised an indefinite dominion over the mouth of the St. Juan river, the necessary first stage if the Nicaraguan isthmus were chosen for the cut. This protectorate Nicaragua alleged to be unlawfully imposed upon her own Indian subjects. The town at the mouth of the river was forcibly seized by the British Navy in 1848 and renamed Greytown as an outward sign of annexation. In 1850, the Bulwer-Clayton Treaty was signed by which Great Britain and the United States agreed (i) not to fortify any position commanding a prospective canal or in its vicinity, (ii) not 'to occupy . . . or colonise or assume or exercise any dominion over Nicaragua, Costa Rica, the Mosquito Coast, or any part of Central America'. It was agreed that the old colony of Belize or British Honduras was not included within this prohibition. But the matter was very far from being cleared up. Great Britain understood the treaty as not interfering with any retrospective claims and firmly maintained her grasp on the Mosquito Indians. Further, she organized a government in the Bay Islands in the Bay of Honduras, claiming them to be a dependency of Belize. Thus the eastern approach to another possible canal route was in British hands. Even if these actions were in accordance with the letter of the treaty, which is doubtful, such a provocative colonial policy was exceedingly mistaken unless Great Britain was prepared to fight for the control of Central America, which she was not. Still it was deliberately

<sup>1</sup> It should be pointed out that by control they did not then intend any exclusion or adverse discrimination against foreigners when the canal was built, as the terms of the Bulwer-Clayton Treaty clearly indicate.

initiated by Palmerston and maintained by Lord John Russell. How far it was influenced by the pressure of financial interests is uncertain. It was certainly influenced by the appeals from Central American settlers to protect them against the undesired extension of control by the United States. On the whole, the American authorities engaged in this long-drawn-out controversy showed a more conciliatory spirit than in other cases, where they were standing on much less solid ground, especially as a number of other irritating questions were at issue between the two governments. This was largely due to the example and precept of Buchanan, who represented the United States in London from 1852 until his election as President (1856). Lord Clarendon, on the other hand, appears in a much less favourable light than usual in the secrecy and evasiveness with which he allowed all these disputes to drag on. A draft treaty to settle by Anglo-American arbitration the differences with Central America (1856) was rejected by the Senate. An attempt to repeat the success of the Ashburton mission with Sir W. Ouseley completely failed in 1857. Finally a series of treaties was arranged direct with the Central American republics by which Great Britain in effect renounced all the territories in dispute; after its conclusion it was communicated to the United States, whose President publicly testified to his satisfaction in the Annual Message of 1860. British diplomacy had, in fact, tacitly recognized the claim made by President Buchanan in 1858 that:

‘It is beyond question the destiny of our race to spread themselves over the Continent of North America. . . . The tide of emigrants will flow to the South, and nothing can eventually arrest its progress. If permitted to go there peacefully, Central America will soon contain an American population which will confer blessings and benefits as well upon the natives as their respective governments.’

The refusal of the British Government to join with Napoleon III in the Mexican adventure in the day of

American distress during the Civil War shows that this reversal of policy was definite and permanent. And, in spite of the bitter feelings engendered by the *Trent* case, and the depredations of the *Alabama*, it can be truly maintained that the renunciation of the policy of pin-pricks in the isthmus marked the true turning-point in Anglo-American relations during the nineteenth century.

When, however, we come to the Venezuela boundary dispute we hear America speaking with a stridency and a naïve arrogance strangely reminiscent of Polk and the flamboyant 'forties. This ancient question had been simmering for most of the nineteenth century. British Guiana had been ceded by the Dutch in 1814; and when Venezuela asserted her independence and succeeded to the local Spanish heritage, she claimed to include nearly half the territory which Great Britain asserted to have been legally included in the Dutch cession and was later demarcated by a detailed survey in 1848. In 1876 Venezuela invoked the assistance of the United States 'as the most powerful and oldest of the Republics of the new Continent', but while the State Department investigated the matter it showed no hurry to proffer its good offices. Gladstone had shown a readiness to submit the matter to arbitration, but after the Conservatives came into power in 1886, Salisbury, both Premier and Foreign Secretary, refused on the grounds that the boundary had been settled by treaty with the Dutch 'long before the Republic of Venezuela came into existence'. Venezuela replied by breaking off diplomatic relations. So the matter dragged on until 1895 and Salisbury's third premiership arrived. The United States had been for some time essaying mediation through the usual diplomatic channels and now determined to bring matters to a head. There were several reasons for this—gold had been found in the disputed area, and President Cleveland, whose second term of office was now drawing towards its close, had high ideas of his function as champion of the Monroe doctrine. He seems genuinely to

have believed that Great Britain was bullying a small state out of territory which rightfully belonged to it, and was thus infringing the prohibition against further European colonization in America. He was doubtless encouraged by the unpopularity of Great Britain on the European continent, where the policy of 'splendid isolation' was conspicuous in quarrels with France, Russia, and Germany. Moreover, he found in the new Secretary of State, Olney, an eager disciple with the crude and offensive pen of a ready-writing diplomatic novice. His dispatch of July 20th, 1895, was a singular one, except on the assumption that he meant to provoke war by an insulting and dictatorial note.<sup>1</sup> This, however, was not the case. On the contrary it was probably intended to prevent a war between Great Britain and Venezuela into which the United States might be dragged. He began with a general statement of the present significance of the Monroe doctrine. 'To-day the United States is practically sovereign on this continent and its fiat is law upon the subjects to which it confines its interposition. . . . Distance and three thousand miles of intervening ocean make any permanent political union between a European and an American state unnatural and inexpedient.' The practical application of his generalization was that Great Britain was forcibly attempting to control a weak South American state in a way which could not be reconciled 'with that love of justice and fair play so eminently characteristic of the English race'. She was therefore asked definitely to state whether or no the dispute would be offered to impartial arbitration, and warned that a negative answer would be calculated 'to gravely embarrass the relations of the two countries'. This was almost an ultimatum without a time limit. Lord Salisbury, however, took several months to compose an answer

<sup>1</sup> Olney's own explanation made long afterwards was that 'in English eyes the United States was then so completely a negligible quantity that it was believed only words the equivalent of blows would be really effective'.

couched in his characteristic vein of urbane but caustic irony, and calculated to be completely unsatisfying. Cleveland, in his presidential message (Dec. 17), lost no time in publicly emphasizing the Olney dispatch. Great Britain was 'taking possession of the territory of one of our neighbouring republics'. The United States had the right to determine the disputed line, and to resist any encroachments upon it 'by every means in the power of the nation'. Within a fortnight came the Jameson Raid and the Kruger Telegram. British public opinion was more touchy than at any moment since 1878. The flying squadron which was promptly mobilized could probably have dealt with the combined navies of Germany and the United States. But the Stock-Exchange panic, of extreme violence in Wall Street, made it clear that financial interests were terrified of war. The long negotiations between the two governments which consumed 1896 were immensely aided by the personality of Sir Julian Pauncefote, the veteran British ambassador at Washington, a *persona gratissima* to all Americans. The final arrangement was a formal compromise but in fact a British success. An arbitration treaty was signed direct with Venezuela—of the five jurists, two were nominated by and represented Great Britain, of the two representatives of Venezuela one was nominated by the United States, and these four agreed to select the eminent Russian international lawyer, de Martens, as a fifth. The tribunal was to be governed by the rule that 'adverse holding or prescription during a period of fifty years shall make a good title'. Britain was thus assured of the success of most of her contention before she agreed to enter the arbitral lists. The decision was unanimous and almost entirely in her favour.<sup>1</sup>

Another South American dispute to which Great Britain

<sup>1</sup> The Court of Arbitration was a very distinguished one. Besides Professor de Martens, Great Britain was represented by Lord Russell of Killowen and Sir Richard Henn (later Lord) Collins. The United States by Chief Justice M. W. Fuller and Justice D. J. Brewer, the later having been nominated by Venezuela.

was a party was that with Brazil as to the frontiers of British Guiana. Here again the conflict of jurisdiction dated back to the period of Dutch and Portuguese sovereignty. Brazil claimed in virtue of the prior Portuguese discovery, and asserted a right by international law to the territory as forming part of the basin of the Amazon. Great Britain held that she inherited an effective occupation on the part of the Dutch which was transferred by the Treaty of 1814. In 1842 the area had nominally been neutralized and reserved to the Indian inhabitants, but, in fact, both Brazilian and British subjects were continually penetrating it in commercial rivalry. In 1901 the two countries agreed to submit their difference to the King of Italy, who was given the right as arbitrator to take into account all facts subsequent to 1842. Great Britain unsuccessfully endeavoured to get the agreement of Brazil to the principle of fifty years' prescription, which, as we have seen, was advocated in the Venezuelan arbitration. The award published in 1904 was a compromise by which Great Britain obtained sovereignty over the larger part of the contested territory, the arbitrator not having admitted the complete validity of the claims put forward by either litigant.

An almost similar dispute with an even longer history between France and Brazil over the limits of French Guiana was referred in 1900 to the arbitration of the Swiss Federal Council. This actually dated back to a conflict of jurisdiction between French and Portuguese in 1688, left in the air by the ambiguity of the Treaty of Utrecht. During the Napoleonic Wars Portugal had obtained French Guiana, which was retroceded to France by the Treaty of Paris (May 30, 1814). As the retrocession was defined by the ancient limits of the colony nothing was settled, and Brazil inherited the disputed boundary when she severed her connexion with Portugal. The contested territory became a kind of no-man's-land for adventurers and scoundrels, until between 1895-7 France engaged in military operations to avenge certain of her compatriots who



had been outraged or kidnapped. In order to put an end to such an intolerable nest of anarchy the two countries agreed (1897) to submit their differences to the Swiss Federal Council. In so doing they defined carefully the limits within which an arbitral sentence could be given.<sup>1</sup> The result was a compromise. The Swiss Federal Council again acted in the same capacity to settle a dispute between Colombia and Venezuela in 1922. In 1933 a similar question between Guatemala and Honduras was decided by a mixed arbitral commission presided over by the Chief Justice of the United States, Mr. Hughes.

A special mention must be given to the most notorious of all such South America controversies: between Chile and Peru, over the provinces of Tacna and Arica (1883–1929). This illustrates all the vices inherent in the attempt to arrive at a peaceful settlement when neither party desires what is just and equal, but merely its own advantage. Neither the letter of the original treaty, itself tinged with ambiguity, nor direct negotiations between the two countries, nor an attempted plebiscite held under the auspices of the United States (1925) produced any solution. It was only in 1929 that the two countries wearied of this perpetual ulcer in their relations and agreed to the arbitration of President Hoover.

In 1879 Peru, under her treaty with Bolivia, was drawn into the so-called 'Nitrate War'. Bolivia having withdrawn in defeat, left Peru alone to be crushed. The Treaty of Ancon (1883) provided for the provisional cession of

<sup>1</sup> Failure to do this in the reference of the Maine dispute to the King of the Netherlands was one of the reasons why the Senate refused his award (1831). It declared that in tracing a compromise line he was exceeding his powers, which extended only to the decision as to whether the American or British claim in its entirety was justified. A curious point arose after a boundary dispute between Brazil, Peru, and Bolivia had been referred to the Argentine Government in 1902. Bolivia subsequently transferred her rights in the matter to Brazil. Could this transfer be recognized by the arbitrator, Peru not having been a party to the transaction, and protesting against it? In effect it rendered the treaty null and void.

Tacna and Arica, a sparsely populated region of some 9,000 square miles between the Andes and the Pacific. The relevant clause provided that these territories should 'remain in the possession of Chile and subject to Chilean laws and authorities during the term of ten years, to be reckoned from the ratification of the present Treaty of Peace. At the expiration of that term a plebiscite shall, by means of a popular vote, decide whether the territory of the provinces referred to is to remain definitively under the dominion and sovereignty of Chile, or continue to form a part of the Peruvian territory.'

At first, public utterances by Chilean ministers suggested that the government intended loyally to abide by the result, and to accept the monetary compensation provided by the treaty (10 million pesos) should it prove the loser. But as the term drew near its end disputes arose over the interpretation of the treaty. Was the plebiscite to be held by Chile or by Peru? Was the vote to be confined to native Peruvians or to be extended to all residents? Must the vote be taken immediately after the expiry of ten years, or could it be deferred to any subsequent period? As no serious attempt was made to answer any of these questions by negotiation, the ten years elapsed. Nothing was done except to quarrel. Chile, it is true, made various proposals for sale or territorial compromise; Peru declared that she stood by the treaty and nothing but the treaty. Chile replied to this intransigence by an intensive policy of Chileanization: the more recalcitrant elements in the population were expelled, the remainder moulded into docility by intimidation and the discipline of compulsory service in the army. Chilean immigration was encouraged by bounties and the undertaking of large-scale government works. The relations between the two governments by a natural process incurred further deterioration until in 1910 they began a long period of diplomatic non-intercourse. The Chilean Government had now firmly adopted the view, for which it must be confessed the history of the nineteenth century gave ample warrant, that the plebiscite

was intended merely as a 'disguised' cession. Accordingly they had not the least intention of allowing such a vote until the ground had been prepared with the minutest care and the result placed beyond doubt.

The Peruvians, however, hoped that the Great War would further their case, for they broke off relations with Germany in October 1917, whereas Chile maintained her neutrality. President Wilson's speeches fitted in well with Peruvian aspirations, while the acceptance by the Allies of the Fourteen Points raised the hope that they could be extended at Versailles to set right this South American injustice. The intimidated Peruvians within the two provinces raised their heads, and Chile and Peru were again on the brink of war. The latter country brought the dispute before the League in 1920 as one involving a danger of war, but withdrew the motion before it was raised. The world-wide publicity thus given to this ancient quarrel, together with its economic inconvenience as between neighbours, induced a fresh attempt at direct negotiations, which ended in 1922 by the agreement to accept the invitation of President Harding to submit the ambiguous clauses of the Treaty of Ancon to the arbitration of the President of the United States, who was also to decide whether or not a plebiscite should be held. His award in 1925 upheld the Chilean contentions that the voting could take place at any time after the conclusion of the decennial period, and that it should be held under the Chilean laws and authorities. He decided in favour of an immediate plebiscite, in which all literate males, who were either natives or residents in the area since 1920, were entitled to vote. The conditions under which it should be held were to be laid down by a supervisory commission comprising three members, a Chilean, a Peruvian, and an American as president. It was only after the utmost difficulty that Peru was induced to agree to conditions which her opponent naturally celebrated as a Chilean triumph. The President nominated General Pershing, the austere and hard-headed American

Commander-in-Chief in France, as the representative of the United States. His task proved hopeless; his colleagues were fierce partisans, he had no executive authority, and his prestige and that of the United States counted for surprisingly little in view of the sinister determination with which the Chilean Government pursued its policy of intimidation and obstruction. Finally in June 1926, after Pershing had retired through illness, his successor, General Lassiter, was compelled to declare that the commission was terminated without having fulfilled its mission, as the Chilean Government had entirely failed to create suitable conditions for holding a genuine popular vote. Thus the whole matter was thrown back into the old condition of threatening and apparently perpetual suspension. The United States, however, persevered in their attitude of friendly pressure until in 1928 the two countries resumed diplomatic relations abandoned for eighteen years. Chile had suffered in repute by the publicity given to her system of terrorization, which had been officially stigmatized as the stumbling-block to settlement, and was now ready for a division of territory. This was effected in principle by a treaty between the two states, and President Hoover was called in as arbitrator to settle the details of a boundary line (1929). Peru gained Tacna and Chile kept Arica, paying, as compensation for a sovereignty thus finally legalized, six million dollars.

It took fifty years to settle this envenomed quarrel about 35,000 inhabitants and 9,000 square miles of territory which possessed negligible mineral wealth and is said to have been a constant expense to Chile during the period of her occupation. It is perhaps for that reason that the frontiers of peace though continually threatened were never actually violated.

#### IV

We may now turn finally to similar disputes between European countries, which are comparatively few in num-

ber and not of outstanding interest. Almost all refer to extra-European possessions, and a considerable proportion arose out of the 'scramble for Africa', which had been itself in its broad issues so successfully settled by the complicated negotiations between the Great Powers during the 'eighties.

Among those in which Great Britain was engaged three hardly deserve inclusion within our category, for they were imposed rather than negotiated settlements in which Britain asserted the justice of her claims by ultimata, backed by a naval predominance which made armed resistance unwise if not futile. These were the disputes with Portugal<sup>1</sup> over the Zambezi region (1890), with France over Fashoda (1898), and with Turkey over the Egyptian frontier in the Sinai Peninsula (1906). It may, however, be noticed that Lord Salisbury, who was responsible for the enforcement of Britain's claims in the two former instances, showed a real spirit of conciliation when once the foreign claim had been withdrawn. Portugal received in 1891, by a convention between the two countries, a portion of the contested area as an act of grace, while France in 1898, as a return for her enforced withdrawal from the Upper Nile, was given a generous extension of undisputed influence in Central Africa.

Great Britain, also, under her treaty obligations acted as a principal in the long-drawn and dangerous controversy between Russia and Afghanistan as to the northern boundary of the latter. The Russian *Drang nach Osten* had been intensified after her failure to rearrange the map of Turkey in Europe according to her desire in 1878. It became increasingly clear that the only way to avoid a

<sup>1</sup> The question of the ownership of Delagoa Bay had already been settled in Portugal's favour in 1875 by the arbitration of the President of the French Republic, Portugal undertaking not to cede the territory except to Great Britain. It had been under the Portuguese sovereignty some 300 years, but in 1823 was occupied by Great Britain and claimed on the ground that it had been left derelict by Portugal, whose title consequently lapsed.

*casus belli* in the East was to obtain a definite agreement as to the limits of Afghanistan, the independence of which Britain was determined to safeguard under her own suzerainty in the interests of the North-West Frontier of India. On the initiative of the Viceroy, Lord Ripon, a boundary commission was set up in 1883 consisting of one British and one Russian officer of high rank and repute as surveyors. Its work was imperilled by the 'Pendjeh incident' (1885), when a Russian force seized an important district of contention after a bloody affray, which led Gladstone to move a vote of military credit for £6,000,000 in the House of Commons. As sometimes happens this bloodshed hastened the work of settlement, for it revealed how closely both countries were stepping to the abyss of war. The work of the commission was harmoniously completed by 1887 and embodied in a formal political agreement.

Russia had as early as 1826 settled by treaty with Sweden, after a similar employment of boundary commissioners, the old uncertainty as to the sovereignty of the so-called 'Common Districts' of Lapland on the Finnish frontier. Finland had been ceded by Sweden to Russia in 1810 with the frontiers as described in the Treaty of 1751 between Sweden and Denmark to settle the limits of Norway, which formed part of the Danish kingdom until the Treaty of Vienna. The geographical ambiguities inherent in this treaty had however, never been cleared up. Of other European examples, it suffices to mention the sequel to the Berlin Conference of 1878 by which Greece received an accession of territory. Greece, unlike Montenegro, had not been engaged in war with Turkey. So, although it cost the signatory Powers years of laborious negotiation and pressure to force the reluctant Porte to disgorge any territory to either, it is unnecessary even to summarize the stages of Montenegro's aggrandizement since it was in reality made inevitable by the role played as a belligerent by that turbulent principality.

Greece, it is true, had been within an ace of a declara-

tion of war in February 1878, but the order given for the troops to cross the frontier was rescinded at the last moment. Her representatives therefore attended the Congress of Berlin of grace as suppliants, not of right as minor victors. The treaty, however, recognized their claims in the following clause (Art. XXIV):

'In the event of the Sublime Porte and Greece being unable to agree upon the rectifications of frontier suggested in the 13th Protocol of the Congress of Berlin,<sup>1</sup> Germany, Austria-Hungary, France, Great Britain, Italy and Russia reserve to themselves to offer their mediation to the two parties to facilitate negotiations.'

The Powers, with the temporary exception of France, were not enthusiastic in pressing the Greek claims. They probably agreed with the chilling advice given to that country by Beaconsfield that, like a young man with a future, she could afford to wait. The Porte was well aware of this and showed no disposition to offer more than the most trumpery concessions in the direct conversations which she was obliged to hold with Greece. The Powers intervened by means of a joint boundary commission, the report of which in 1880 was adopted and recommended to Turkey. The Porte refused in a reasoned reply, pointing out the strategic disadvantages of the proposed frontier and the injustice of including within the Greek kingdom considerable numbers of Albanians in the portion of Epirus to be ceded.

Nearly a year passed before the mediating Powers succeeded in inducing Turkey to sign a treaty, to which Greece was not a party, ceding to the latter an extent of territory considerably smaller, especially on the west, than that involved in the proposals of 1880. Greece was exceedingly dissatisfied, for she had received less than the

<sup>1</sup> 'The Congress invites the Sublime Porte to arrange with Greece for a rectification of frontiers in Thessaly and Epirus and is of opinion that this rectification might follow the valley of the Salamynas (the ancient Peneus) on the side of the Aegean Sea and that of the Calamas on the side of the Ionian Sea.'

proposal of the Berlin Protocol, itself regarded by Hellenic sentiment as a beggarly minimum.<sup>1</sup> During the crisis of 1885 when Serbia attacked Bulgaria, which had acquired the peaceful possession of the province of Eastern Rumelia contrary to the Treaty of Berlin, Greece mobilized and was only restrained by a blockade of her coast by the Great Powers from endeavouring to extract by war her full claims from Turkey. This enforced submission did nothing, however, to induce the Greeks to be content with what they had already received, as future history was to prove.

Finally, we may notice the mediation by Pope Leo XIII on the ownership of the Caroline Islands, disputed between Spain and Germany (1885). The choice of the Pontiff was welcome to Spain with her unique Catholic traditions and was politic on the part of Bismarck, who desired a graceful retreat from the internal difficulties in which he had been placed by the *Kultur Kampf*. Bismarck originally suggested arbitration, but Leo XIII rightly saw that a role of conciliation was more likely to promote goodwill between the parties and to safeguard his own position than a quasi-judicial verdict upon contested principles. This is obvious if it is remembered that the first argument adduced by Spain was that the Carolines were included within the Spanish sphere by Alexander VI's Papal Bull dividing the New World in 1493. The validity of such an instrument Leo would not wish positively either to affirm or to deny. The Spaniards also claimed in virtue of priority of discovery and the tacit consent of the natives. Germany, on the other hand, denied that the Spanish occupation was effective in the sense demanded by the recent Berlin Act, of which both parties were signatories, and asserted that any Spanish rights had been lost by dereliction, pointing out that in 1874 the joint refusal of Great Britain and Germany to recognize Spanish sovereignty had met with no protest from Madrid.

<sup>1</sup> i.e. as not including Crete 'the great Greek island'.



The Pope, therefore, refrained from expressing any definite judgement as to the validity of either claim, but suggested to the two parties to agree spontaneously on a recognition of Spanish sovereignty, with ample treaty provisions for German freedom of commerce, navigation, and fishing. The prestige of the Papacy was raised; Spain and Germany were completely satisfied. The former had obtained the desired territory, while Bismarck, who cared little for this remote possession, was strengthened in his improving relations with the Catholic Centrum.

## V

It will be seen from this survey, which is representative rather than exhaustive in its scope, how extremely various and elastic are the solutions which have been devised or adopted for these complicated and thorny problems. Direct settlement by treaty may be negotiated through the normal diplomatic channels, or consummated by a special mission, or through the good offices or mediation of another Power or group of Powers. Boundary commissions are set up either with full power of settlement, or restricted to a report in no wise binding upon the governments concerned.

Arbitration, perhaps the commonest though not infrequently the last resort, assumes a number of forms. The arbitrator may be given a completely free hand, or his duties may be strictly limited and defined by the instrument which lays the task upon him. He may be chosen for a combination of eminence and impartiality as the head of a state, or he may be an eminent international jurist. On the other hand, the arbitrators may be appointed by the parties in dispute from among their own subjects, sometimes with an impartial foreigner to prevent the possibilities of a deadlock. Or again, as in the British-Venezuelan dispute, the board of arbitration may contain representatives of a Power which has interested itself in the case without being directly concerned with the

controversy at issue. Or finally, the parties may have resort to a permanent body, as, for example since 1902, the Permanent Court of Arbitration at The Hague.<sup>1</sup>

Immediately after the War problems were submitted to the Supreme Allied Council at Paris, as for instance the partition of the Banat of Temesvar between Roumania and Yugoslavia.<sup>2</sup>

Since the creation of the League of Nations its Council has been called upon to settle a number of disputes. Among these may be mentioned first the disputed sovereignty over the Aaland Islands, which occupy a commanding position at the mouth of the Gulf of Bothnia. They had become part of Finland when that state gained its independence from Russia in 1918. About 96 per cent. of the 22,000 inhabitants are, however, of Swedish origin, and in 1919 an unofficial plebiscite gave a majority of 95 per cent. for union with Sweden. The Council, after appointing an international commission of jurists to determine their competence in the matter, sent a commission of inquiry to visit the islands, which reported in favour of Finnish sovereignty for geographical and economic reasons. A wide measure for the autonomy of the inhabitants has been embodied in the Finnish constitution.

Later decisions are the settlement of the boundary of Upper Silesia between Germany and Poland after the inconclusive result of the plebiscite, the solution of the controversy between Great Britain and Turkey on the ownership of the Mosul Vilayet, and the Wal-Wal dispute between Italy and Abyssinia (1935).

<sup>1</sup> The following boundary cases have been settled by the Court: (i) the maritime frontier between Norway and Sweden, 1909; (ii) the Island of Timor dispute between the Netherlands and Portugal, 1914; (iii) the dispute over the sovereignty of the Island of Palmas between the United States and the Netherlands, 1928.

<sup>2</sup> The Banat had been allotted, entire, to Roumania by the Treaty of 1916. This, however, was not binding on the Entente after Roumania made her separate peace with the Central Powers (March 3, 1918). The southern portion of the province was in fact inhabited by a large majority of Serbs.

## CHAPTER III

### CESSION

#### A. *Motives for Cession*

##### I

THE peaceful surrender of a portion of territory by one sovereign state to another is so normal and common a procedure as to need little explanation. The main interest lies in an analysis of the circumstances in which such cession has taken place and the methods by which it has been accomplished.

It has already been pointed out in the introduction that no state is likely to make a present to its neighbour of territory and population out of pure altruism or compassion. Territory and population are the source of power and prestige; any precedent, however insignificant, which suggested a readiness to part gratuitously with such sources would certainly be regarded both at home and abroad as a sign of weakness and an invitation to repeat the process on a larger scale. Even if an area proved useless or harmful to its owner, it would almost certainly be desired by some other state, which would give some consideration for its possession. If not, such territory has been in the past left derelict without any formal abandonment of the sovereignty previously exercised; such, for example, was the way by which Tangier passed from the possession of the English Crown.

It may thus be laid down that every cession of territory is dictated by motives of self-interest. But if that self-interest is wholly inspired by fear, the change cannot properly be called peaceful. On the other hand, fear of the consequences, immediate or ultimate, of refusal has often, perhaps generally, been a factor in determining such transactions. Further, any cession may be regarded primarily as either a bargain or an act of policy. In a bargain

the object is to obtain as nearly as possible the immediate value of the article offered. The various mutual cessions between the German states, for which the Treaty of Vienna provided, were based on carefully drawn statistical tables, so many 'souls' on the credit side and so many on the debit side of the balance. The method of purchase, so favoured by the United States, is the most obvious example of such a transaction. As in ordinary commercial dealings, the bargain may prove either a good or a bad one, but the object is to obtain an equivalence.

On the other hand, policy is often determined by imponderables which cannot be expressed in terms of cash, square miles, or souls. The most striking example of voluntary cession without any outward and visible recompense is that of the Ionian Islands to Greece in 1863.<sup>1</sup> It is consequently worth while to give this episode a fairly full consideration.

## II

The Ionian Islands—seven in number—of which Corfu, Zante, and Cephalonia are the chief, were placed under the immediate and exclusive protection of Great Britain by the Treaty of November 1815 between Great Britain, Russia, Austria, and Prussia. These islands had formed part of the possessions of the Venetian Republic until its extinction in 1797, being successively in the power of France, under the suzerainty of the Turk, then in French hands again (1807–9), and finally British by conquest during the Revolutionary and Napoleonic Wars. The arrangement reached in 1815 was not primarily due to British initiative but to the insistence of Alexander's Minister, Capo d'Istria. He, being both a native of Corfu, a liberal, and later a passionate

<sup>1</sup> Strictly speaking, in international law this was not a cession but a voluntary extinction of the sovereignty of the 'free and independent United States of the Ionian Islands' by the wish of the inhabitants and by the agreement of the Protecting Power to give up the rights guaranteed to it by the Treaty of 1815. In practice, however, Great Britain had often acted as though the sovereignty of the islands legally belonged to her.

advocate of the Greek cause, hoped to ensure for this fraction of his fellow countrymen liberty and good government under the British aegis. There is no evidence that the British Government coveted these islands as an additional naval base in the Mediterranean, nor were they ever developed as such, though the harbour of Corfu in particular is well adapted for such an expansion. It is indeed geographically obvious that their main strategical importance would be directed against Austria, as they are well placed for controlling the Straits of Otranto and thereby closing the Adriatic. As, however, Austria was neither a naval Power nor one with whom Britain entered into rivalry at any point, such a consideration would have no significance. Britain was in fact ready to allow them to pass into the possession of Austria. On the other hand, they are very ill placed as a base against Russia in her designs against Constantinople and the Straits. In fact, during the Crimean War, the islands, by British proclamation, remained neutral. The role to be played by Great Britain as protector was not very closely defined beyond an injunction 'to employ a particular solicitude with regard to the legislation and general administration of those States'. In effect, up to 1849 the constitutional charter which had been issued in 1817 did not prevent a practically despotic government by successive high commissioners, such as Maitland—nicknamed 'King Tom'. In 1849 an insurrection which broke out in Cephalonia was repressed with uncompromising severity, but, as its sequel, the islands were given a genuine measure of self-government. The legislative assembly became a noisy reality and occupied itself both with thwarting the commissioner and agitating for a union with Greece. As Greece was then writhing under the corrupt incompetence of King Otto and was actually being blockaded by Palmerston to enforce the grotesque claims of Don Pacifico, she was regarded as a most unsuitable owner of the Ionian Islands. Moreover, an irregular warfare against Turkey during the

Crimean War led to the occupation of Peiraeus by a British force until 1857.

Such was the position in 1859 when Gladstone accepted the offer of the new Conservative government of an Extraordinary Mission as High Commissioner to inquire into the relations between Great Britain and the Islands. The appointment of so noted a phil-Hellene was in itself enough to suggest to the islanders that he came to consummate their desire for union with Greece. His arrival also coincided with the publication of a dispatch from the existing High Commissioner, Sir John Young, which had been stolen from the Colonial Office, advocating the transfer of five islands (excluding Corfu and Paxo) to Greece.<sup>1</sup> This naturally heated still more ardently the flames of nationalism.

As might be expected, the legislative assembly unanimously expressed their 'will' for union with Greece, and after sending a petition to the Queen, rejected the programme of political and social reform which Gladstone put forward as the panacea for a régime which he described as 'all indolence, decay and stagnation'.

So matters remained until 1862 when the Greeks finally rid themselves by revolution of their repellant Bavarian monarch. They had now to elect a new sovereign, and the choice of the National Assembly actually fell on the Duke of Edinburgh. This desire to be thus closely connected with the British Royal family proved abortive, as the three protecting Powers, Great Britain, France, and Russia, reaffirmed their previous self-denying ordinance, which excluded from the throne members of the ruling house of their respective countries.

But in 1863 Greece obtained by a side-door the desired association with Great Britain by choosing George of Denmark, the brother of Alexandra, who had recently married the Prince of Wales amidst great popular enthusiasm.

<sup>1</sup> Sir John had changed his mind after writing this dispatch some eighteen months previously.

This event made the transfer of the islands certain, for in the previous year the provisional government had been officially informed, that if a suitable king were chosen who would maintain constitutional monarchy together with peace towards Turkey and a policy acceptable to Great Britain, the transfer would be made. It was accomplished in three stages. The local assembly once more passed a unanimous vote in favour of union. The Great Powers signed a protocol authorizing the transfer, the terms of which were finally settled by a treaty between Great Britain and Greece in 1864.

Great Britain thus relinquished a responsibility which had brought her no money and much trouble. The provision for the neutralization and demilitarization of Corfu obviated any danger of the creation of a naval base which might be used against British interests. The effect upon Greece was exactly that intended, of confining her movements within the British orbit and preventing the possibility of that country being drawn into any Mediterranean combination hostile to Britain. British influence also tended to moderate and canalize the inevitable hostility between Greece and Turkey. On the other hand, the raising within four years of the Cretan question in an acute form was largely due to the precedent of 1863. The Ionian Islands were naturally regarded as the first stage only in the unification of Greece, and the 'Great Greek Island' of Crete was claimed, though without success, as the next instalment.

### III

We may here pass to transactions where the element of bargaining, though by no means absent, is not the prime motive. Two states may be prevented from the good or even intimate relations which both desire, or indeed feel necessary, by a number of disputes and conflicts of interest which may be irritating but in no way vital.

It generally happens that these are not all *pari materia*; they will not all be of a territorial character capable of a

settlement by a simple exchange of territory. Any settlement therefore must imply the weighing in the same balance of interests both territorial and otherwise. As, however, in such cases the settlement is a means towards an end rather than an end in itself, the aim is not an exact equipoise. It is rather an arrangement which will be accepted as reasonably fair by the public opinion of either state. If thus accepted it paves the way for the closer collaboration in high policy for which the former was a necessary preliminary.

Modern examples of such an accommodation may be given by an examination of the Anglo-German Treaty of 1890 and the instrument which provided a firm foundation in 1904 for the Entente Cordiale.

In January 1889 Bismarck, alarmed at the growing signs of a close connexion between France and Russia, suggested an alliance between Germany and Great Britain pledging them to mutual support for a limited period against a French attack. Such a treaty, if published, would in his opinion preserve the peace of Europe. Great Britain had already moved towards the triple alliance by the Mediterranean Agreement of 1887 guaranteeing the *status quo* in that sea together with Austria, Italy, and Spain. The only probable disturber against whom the alliance could be aimed was France.

To facilitate its aim, Herbert Bismarck, the Foreign Minister, was sent over to England on a special mission in March 1889 followed in August by a visit from the Kaiser. Salisbury, with that characteristic distrust of definite engagements with foreign Powers which he retained until the close of his career, while expressing sympathy with an alliance, evaded any definite conclusion, saying, 'Meanwhile we lay it on the table, without saying Yes or No; that is unfortunately all I can do at present.' At the instance, however, of Chamberlain—not of course at that time a minister—who affirmed to Herbert Bismarck that every effort must be made 'to remove all points from which



difficulties might arise between the two countries in the future', official conversations were opened to that end.

The questions actually discussed and settled were all of a territorial character, but it was well understood that the ultimate object was 'co-operation in the high sphere of European diplomacy'. To Great Britain in particular the goodwill of Germany in her administration of Egypt was of the highest importance. The German vote on the *Caisse de la dette* was often decisive in releasing the money required for British financial policy in that country.

The Berlin Conference (1885) had laid down the principles which were to regulate the acquisition of territory or rights over territory by European Powers in Africa. It had not, however, by any means exhaustively settled the actual claims which were being staked out so rapidly in the scramble for that continent. Consequently Great Britain and Germany found themselves in an awkward rivalry at several points both in the east and the west. Bismarck always acted sincerely on his professed principle that colonial matters were of secondary consideration for German policy but that the pressure of public opinion forced him to see that the Empire obtained its due share. While therefore permitting the semi-official activities of such enterprising agents as Dr. Karl Peters, he had no intention of jeopardizing good relations with Great Britain by pushing such claims to an extremity if he could meet with a spirit of conciliation and a readiness to compromise. His agents could always be held in reserve to whip up a popular agitation if the British Government showed a dilatory or difficult spirit.<sup>1</sup>

Now in entering into negotiations Bismarck's real object

<sup>1</sup> 'If Lord Salisbury refers again to a postponement of the negotiations, please remind him that Dr. Peters will arrive on the coast at the end of June and that taking into consideration his character and antecedents it is certainly to be expected that in pushing the treaties concluded by him he will arouse our public opinion against England.' (Marschall to Hatzfeldt, May 31st, 1890.) Bismarck was now no longer Chancellor but this exactly illustrates his method.

was not to haggle precisely over African possessions and spheres of influence but to acquire Heligoland. Fortunately for Germany that famous rock, which Britain seized from Denmark in 1807 to create a vast base for smuggling British goods into north Germany in order to defeat the continental system, was officially regarded by Lord Salisbury's Cabinet as of no material or strategic importance in those days.<sup>1</sup> It had not been fortified or even converted into an effective harbour, much less a naval base. A war with Germany was regarded as a very remote possibility and the German Fleet was still in 1890 a completely negligible quantity. It does not seem to have occurred to the Admiralty that even if Britain could make no use of it in a war with Germany, which was probably true, the fact that it would have been captured by the Germans in a completely unfortified state would have been of the highest strategical significance. The essence of the German desire for possession was in order to fortify and develop it as a naval base, a long and expensive business which could not possibly be improvised during a war. It is, therefore, true that if Britain engaged in a conflict with Germany, an unfortified Heligoland, even if captured on the first day of hostilities, would have been of practically no possible value to the German Navy during that war.

Now let us consider why German official sources already attached so high a value to the island.

'The possession of Heligoland is of supreme importance to us and is by far the most serious matter in the whole negotiation. . . . We shall, therefore, always regard the acquisition as a gain in itself even as against the concessions mentioned in my telegram, or any similar ones in the colonies.'<sup>2</sup>

<sup>1</sup> Statement by Sir J. Fergusson, Under Secretary for Foreign Affairs, in the House of Commons on the debate on the Anglo-German Agreement July 16th, 1890. Admiral Mayne said in the same debate: 'The possession of the island would have no bearing on a war between this country and Germany. . . . I have never heard a naval officer of any rank or position say that Heligoland is of any real value to us.'

<sup>2</sup> Marschall to Hatzfeldt, May 29th, 1890.

The reasons are as follows:

- (i) 'Without Heligoland the Kiel Canal is useless to our Navy.'<sup>1</sup>
- (ii) 'This island in the possession of England is nothing more or less than a jumping-off point for attacks on the mouth of the Elbe and the west coast of Holstein.'<sup>2</sup>
- (iii) Conversely it is 'the natural advanced post of the German coasts and rivers'.<sup>3</sup>
- (iv) If England were neutral in a Franco-German war, French warships might coal at the island or run there for safety, thus creating a dangerous Anglo-German tension.

There is no evidence that the British Cabinet appreciated or even understood any of these reasons except the last. German diplomacy was unusually skilful in preventing Salisbury from realizing how important an interest was at stake. The question was not raised by them; on the contrary it was first mentioned by Chamberlain, probably with Salisbury's knowledge. 'What would you think if we gave you Heligoland instead (i.e. of the concessions in Africa) which is useless to England and perhaps worth having for you, were it but for the prestige?'<sup>4</sup>

In effect the agreement for which Bismarck can claim the credit, though its conclusion was reached some months after his dismissal in 1890, is a good example of the way in which rights over territory can be weighed against the actual cession of sovereignty. Germany received in Europe Heligoland, and in West Africa a strip giving her access to the Zambezi. In return she gave up protectorates over Zanzibar and Witu and renounced her vague claims to the hinterland of German East Africa, which as interpreted by extremists like Peters meant a potential conflict over

<sup>1</sup> Ibid.

<sup>2</sup> Bismarck to Munster, May 5th, 1884.

<sup>3</sup> Munster to Bismarck, May 8th, 1884.

<sup>4</sup> Quoted in Herbert Bismarck to Bismarck, March 27th, 1889.

the boundaries of Rhodesia and Somaliland and eventually over the dominion of the Upper Nile.

It also illustrates how a deal between two Great Powers may be facilitated by the fact that the primary interest of each in concluding it was different. Germany as a European Power was particularly anxious to safeguard her naval supremacy. She secured Heligoland in which British public opinion took little interest. Great Britain as a colonial Power was intent upon maintaining her preponderant position in the southern half of Africa, together with command of the Nile Basin. Neither the German Government nor public opinion was seriously concerned to dispute the British thesis. Colonies were for Germany in 1890 a matter of prestige and 'a place in the sun'. She was a colonial Power not accidentally but incidentally.<sup>1</sup> The method by which the cession of Heligoland was carried through raised several points of interest.

(i) The cession was not made by treaty by the prerogative of the Crown and submitted to Parliament for ratification. It rested wholly on parliamentary authority, the whole arrangement being treated as a Bill ('The Anglo-German Agreement Bill') and passed through the legislature by the usual stages. Gladstone, with his peculiar tenderness for conservatism in constitutional procedure, attacked this innovation, as Ministers admitted it to be.<sup>2</sup> The main objection raised was that it practically gave the House of Lords a veto upon the foreign policy of the government. It seems to have been followed with the object of emphasizing the responsibility of Parliament for the transfer of European subjects of Great Britain to a foreign sovereignty.

(ii) This point was emphasized in debate, and proposals

<sup>1</sup> The agreement, on the other hand, was very much disliked in France, and to obtain its recognition Great Britain had herself to acknowledge both the French protectorate over Madagascar and extensive claims in Central Africa.

<sup>2</sup> The cession of Sumatra to Holland in 1815 and of part of the Gold Coast in 1867 had been accomplished by treaty without an Act of Parliament.

were made by the opposition for a plebiscite (which in fact is still unrepresented in the whole history of cession of British territory).<sup>1</sup> The agreement itself, however, made various stipulations in favour of the inhabitants. They were to have the right of opting for British nationality, and their children born before the cession were to be exempted from conscription, and 'native laws and customs now existing will, as far as possible, remain undisturbed'.

(iii) Finally, the existing rights of British fishermen of anchorage, provisioning, and sale of fish were maintained *in toto*. This agreement, though on the whole well received in both countries, raised no enthusiasm, and in fact proved the prelude not to a closer union but to a steadily growing tension between the two countries. In both these respects it proved the opposite of the Anglo-French Treaty of 1904.

At the time when negotiations were begun (1903) for cementing the Entente Cordiale the relations between the two Powers were distinctly worse than those between Great Britain and Germany in 1889. On the other hand, the actual controversies which divided them at the moment, while very various and extending over four continents, contained no issue involving such immense territorial claims.<sup>2</sup> But the two countries were drawn together by the common bond of self-protection much more powerfully than were Germany and Great Britain in 1890. Indeed, as regards the latter it could not hardly then be reckoned as even a contributory motive.

It is not proposed to enter into the preliminaries of the Entente which are now as familiar as any episode in British diplomatic history. Territorial cession plays only a subordinate part in the actual arrangement concluded, which even more than the Anglo-German agreement consists in a balance of different kinds of conflicting interests.

<sup>1</sup> The total number of inhabitants was about 2,000. It is probable, though by no means certain, that a majority would have voted in favour of cession.

<sup>2</sup> It has been calculated that Great Britain obtained rights over nearly a million square miles in 1890.

The core of the matter lay, for Great Britain, in the long delayed recognition by France that the status of Egypt had been changed by the British occupation, which she now agreed not to hamper by the demand for a time limit or in any other way. Similarly the cardinal point for France was the recognition by Great Britain of her special interests in Morocco. If no agreement had been reached on these two questions, the Entente would have been stifled at birth.

The territorial cessions made by Great Britain to France in Africa were recognized as compensation to the latter for giving up her fishing rights on the French shore of Newfoundland, which had provided a continual history of acrimonious quarrels ever since the original stipulations of the Treaty of Utrecht. The French industry was in fact declining, and was reckoned to employ only 250 persons at a yearly profit of £14,000. The cession of some 16,000 square miles of African territory seems a big price to pay.<sup>1</sup> It must be remembered, however, that the presence of the French in Newfoundland was always liable to cause clashes and affrays with the local fishermen, that the economic development of the territory was hampered by this servitude, and considerable expense incurred by the necessity of maintaining a constant patrol of warships. The results of this convention were all and probably more than all that was either foreseen or desired by the British Cabinet. There is no evidence that they expected that this Entente would within two years develop into the unspecified, but almost definite, commitment of a defensive alliance against Germany.

#### IV

We may now turn to a transaction superficially of a somewhat similar character where cession is balanced

- <sup>1</sup> (a) On the east of the Gambia Colony to give France access to the navigable portion of that river.
- (b) On the Nigerian frontier to give France a more direct route to Lake Chad.
- (c) The Los Islands adjacent to French Guinea.

against rights over territory, the Franco-German arrangement of 1911. In reality, however, the difference is of a vital character. The object of Germany was to demand compensation from France for altering the status of Morocco, which had been settled by an international convention, without her agreement. The demand was pointed by the dispatch of a gunboat to the Moroccan port of Agadir, and was backed by a threat of war. The aim in fact was to compel France to do something which she was unwilling to do. The German Government undoubtedly cherished the hope that this show of force would induce France to join in a wide scheme of co-operation between the two countries which would weaken, if not destroy, the Entente.<sup>1</sup> So profound a psychological error in the method of approach immediately ruined all chance of such a result, towards which Caillaux, the French Premier, had been far from disinclined.

It was the later knowledge that Great Britain would intervene, if a conflict broke out, which gave the negotiations the final character of a bargain as between equals. For Germany was not prepared in 1911 to take the risks of a war in which Great Britain would be a belligerent.

The doctrine of compensation, which really meant the maintenance of the Balance of Power as measured in population and territory, had its classic age in the eighteenth century, and its most spectacular recognition in the Congress of Vienna. It simply meant that if one Great Power obtained an increase of territory, the remainder were entitled to an equivalent. It can be discerned in the provisions of the Treaty of Berlin and its sequel. By 1880 all those Powers previously interested in the eastern question had obtained some territory as compensation for the gains direct and indirect of Russia.<sup>2</sup>

<sup>1</sup> See Crowe's Minutes printed in vol. vii Gooch and Temperley, *British Diplomatic Documents*, pp. 821-826.

<sup>2</sup> Austria got Bosnia and Herzegovina; Great Britain, Cyprus; and France, with the leave of the others, occupied Tunis in 1880. Germany had of course already acquired Alsace-Lorraine by conquest in 1871.

Similarly, Article I of the secret treaty between Austria and Italy (Feb. 20, 1887) provided that if either Power found it necessary to alter the *status quo* in the region of the Balkans 'by a temporary or permanent occupation . . . this shall take place only after a previous agreement between the two Powers based upon the principle of a reciprocal compensation for every advantage, territorial or other, which each of them might obtain beyond the present *status quo*'. Moreover, the French had in effect recognized the same principle in 1904, as they had exchanged a free hand in Morocco for their concessions to Great Britain as regards the status of Egypt.

The negotiations of 1911 wear the aspect of an ill-natured and haggling bargain, peaceful in effect but not in spirit. France by occupying Fez, the Moroccan capital, had obviously modified the independence of that state as it had been settled by the Algeciras Conference of 1906. For so doing she was ready to offer something to Germany. But she had no intention, in view of British support, of offering an amount that could be construed as a payment of blackmail. Consequently the question to be settled was how much territory could fairly be ceded for exclusive rights over Morocco, which both sides knew would be so extended as to mean the absorption of that country by force if necessary.<sup>1</sup> Further, in this case the obvious strategic importance of Morocco to France as a Mediterranean naval Power could fairly weigh the balance. Kiderlen-Waechter, the German Foreign Secretary, began by demanding the whole of French Congo without any territorial reciprocity, though with the secret expectation of paying for it by the cession of Togoland. After Mr. Lloyd George's Mansion House speech (July 21) it was clear that France would prefer war to such an extensive surrender of territory.<sup>2</sup> Russia, however, exercised a

<sup>1</sup> Next year France declared a protectorate over Morocco, which gave her all necessary powers.

<sup>2</sup> Sir E. Grey privately expressed the opinion to British representatives



moderating influence, as without repudiating the alliance she made it plain that she would view the outbreak of hostilities with the utmost reluctance.

The final bargain struck on November 4th favoured France. She obtained all that she required in Morocco while ceding about 100,000 square miles of the Congo territory to give Germany access to the Congo river. By artfully allowing leakages of information at an earlier stage as to the extreme German demands, the French Government insinuated into public opinion the belief that Germany had climbed down. This impression was strengthened by the immediate resignation of the German Colonial Minister.

In the political sphere the result of the negotiations was unfavourable to Germany. The uncompromising Poincaré Ministry succeeded that of the more pliable Caillaux in February 1912. The Entente was consolidated by the Grey-Cambon correspondence (Oct. 22nd, 1912), which was the logical sequel to the failure of the German Government to conclude a neutrality agreement with Britain on the occasion of the Haldane Mission (Feb. 1912).

## V

Peaceful cession has sometimes been employed, paradoxically enough, as the instrument or consequence of wars. A state may stipulate, as the condition of entering an alliance the object of which is belligerence, a prior cession of territory—as Bulgaria of Turkey in September 1915. Or again, the cession may take effect after the war,<sup>1</sup> or may be dependent upon the issue of the war—as, for example, the engagement of Piedmont to cede Savoy and Nice to France in 1859; or it may be arranged between allies abroad that it would be worth the while of France to cede all the Congo in return for a completely free hand in Morocco.

<sup>1</sup> Thus a minor provision of the Treaty of London (Apr. 26th, 1915) promised Italy compensation after the War at the expense of British Somaliland. This was finally made by the cession to Italy of some 36,000 square miles of Jubaland.

without previous agreement after the cessation of hostilities, as between Russia and Roumania in 1878. Finally, as in 1866 in the case of Venetia, the cession to a victorious enemy may be disguised by the nominally voluntary transfer to a neutral. It is also possible for a cession to be the price paid by one state to another for neutrality. Of this, however, there appear to be no examples since 1815,<sup>1</sup> though the abortive negotiations between Austria and Italy in the spring of 1915 had this aim.

In 1915 the prime object of Bulgarian policy was to obtain Macedonia, which had been divided between Serbia and Greece after the third Balkan war in 1913. Bulgaria had been crushed by her former allies, whom she had so rashly attacked. She had also been forced to cede a strip of northern territory to Roumania and had little to show for her sacrifices in 1912-13. The Great War was her opportunity. Like the other neutrals, Italy and Roumania, her policy was to be decided by the line of least risk and most profit. The defeat of Russia and the failure of the Gallipoli expedition during the summer of 1915 was her moment of decision. The refusal of Serbia to offer any concessions in spite of the pressure of the Entente was her justification. The Central Powers were naturally willing to give her a free hand to annex Serbian territory, together with a portion of Albania. King Ferdinand was convinced that the Central Powers would win, and that Bulgaria must decide at once or Serbia might be conquered by the impending Austro-German expedition without her aid.

As, however, considerable pro-Entente feeling was known to exist both in official circles and generally in public opinion, it was thought essential to obtain some immediate tangible concession from Turkey to justify the alliance

<sup>1</sup> In December 1805 Frederick-William of Prussia ceded his principality of Neuchâtel in Switzerland to Napoleon, Cleves to Murat, and Anspach to Bavaria, receiving in exchange Hanover which was under Napoleon's occupation but not under his sovereignty. This arrangement was in return for Prussia's neutrality in the war waged by Napoleon against Austria and Russia.

with the hereditary enemy and oppressor against the liberator and protector, Russia. During the third Balkan war Turkey, taking advantage of Bulgarian extremity, had reoccupied Adrianople and the adjacent districts of Eastern Thrace, which Bulgaria had conquered and obtained at great sacrifice. Turkey would not retrocede the fortress of Adrianople itself, but presented Bulgaria with a strip along the Maritza which possessed considerable strategic importance. This last link in the welding of the alliance was forged on September 6th, and was followed by an attack on Serbia within a month.

The arrangement between the Emperor Napoleon and the Piedmontese Prime Minister Cavour at their secret meeting at Plombières in 1858 was contingent upon a successful war against Austria. This they determined to provoke at the earliest opportunity. The objects which the two men hoped to secure were not in fact identical. Cavour hoped not merely to drive the Austrians out of Italy, but to cause the overthrow of the other Italian sovereigns when their protector had been defeated. The object of the war was for him the creation of a United Italy. Napoleon, on the contrary, while agreeing that the Austrian provinces of Lombardy and Venetia should be handed to Piedmont, hoped to make French influence preponderant in the centre and the south and was not ready at that time to sanction any serious diminution of the Papal States. He desired no Austrian territory for France. It was, however, easy for both to agree that in the event of Italy 'being freed from the Alps to the Adriatic', which would imply a powerful Piedmontese kingdom extending over the whole of north Italy, France should be compensated by the cession of Savoy and Nice.

The conditions thus envisaged were not fulfilled by the campaign of 1859. The Emperor Napoleon, fearing complications on the Rhine, made preliminaries of peace with Francis Joseph at Villafranca, without the participation of his ally in the first instance. By this Austria agreed to

cede Lombardy,<sup>1</sup> but not Venetia. It was further arranged that the sovereigns of central Italy, who had been driven out by internal revolutions, should be restored. No question, therefore, of the cession of Savoy and Nice by Piedmont immediately arose. Cavour resigned and left Victor Emmanuel to carry out the treaty as best he could. The rulers of central Italy, however, had no chance of return except by the aid of Austrian arms, which it was known Napoleon would not permit. In effect Tuscany, Modena, Parma, together with the north-eastern portion of the Papal States, the Romagna, had become *de facto* part of Piedmont. During the winter Napoleon withdrew his opposition to the *de jure* union, now clearly inevitable. He now held that the *casus foederis* for the cession of Savoy and Nice had occurred. The new state, which significantly called itself the Kingdom of Italy, would embrace at least 11,000,000 souls, or about half the total population of the peninsula. Few, moreover, believed that the bounds of its progress could now be arrested until the whole had been speedily absorbed. When, therefore, Cavour returned to office on January 16th, 1860, he recognized that he would have to pay his part of the bargain.

A secret treaty embodying the cession was signed on March 12th, followed by a public treaty a fortnight later. During the interval between the two the plebiscites in central Italy had resulted in a triumphant vote for union with the new Italian kingdom. Three weeks later the treaty was approved at Turin by a two-thirds majority of the Chamber.

The importance of Savoy and Nice to France did not lie in the number of inhabitants added to the Empire, some 700,000 after an almost unanimous plebiscite, which proved the faithfulness of the Emperor to the principle of nationality, *la volonté de chacun*, as he himself described it.<sup>2</sup>

<sup>1</sup> The nominal transfer of Lombardy was to Napoleon who undertook to hand it over to Piedmont.

<sup>2</sup> The details will be discussed in the chapter on Plebiscites, *supra*, pp. 147-78.

Its real object was first to strengthen the popularity of the Second Empire by retaining the Napoleonic tradition, by tearing up a portion of the hated treaties of 1815, and by satisfying the French people that they had incurred substantial payment for the war of 1859.

Moreover, the events in Italy proved that another Great Power was being created in Europe.<sup>1</sup> The total population of the peninsula was about 23,000,000, or more than half that of France. While it might be hoped that the two 'Latin Sisters' would live in mutual harmony, it would be obviously imprudent to trust on future gratitude alone as a guarantee of security. Savoy was geographically French. It extended far beyond the Alpine watershed, commanding the upper valleys of the Rhone and Isère. In the hands of a formidable state it constituted a permanent direct threat against Lyon, and a way of access to the heart of France. It had been part of France from 1792 till 1814. Even in the latter year the victorious allies, recognizing its strategical value to France, had allowed the western half to remain part of the territory of the restored monarchy. It was only after the Hundred Days that the whole had been handed back to Piedmont. France was therefore regaining on the south-east the 'natural frontier' which, generally speaking, followed the crest of the Alps. As regards Nice, no such powerful strategical justification can be advanced. Nature has so well provided for the defence of the coastal route into France by the extreme south-east, that history affords no instance of a successful invasion by that route.

These considerations were obviously not those which determined the will of the inhabitants in voting their own transfer. An analysis of their motives can be best undertaken in the section of this book which deals with Plebiscites.

The cession of southern Bessarabia to Russia by Rou-

<sup>1</sup> The first official recognition of Italy's changed position is the invitation to take part as a Great Power in the Conference of London on the Luxembourg question in 1867.

mania in 1878 in return for the acquisition of the Dobrudja from Turkey—the enemy defeated by a common alliance—differs profoundly from the Franco-Piedmontese transaction in spite of its superficial resemblance. Any attempt on the part of Russia to have made any such stipulation previous to the war would have made the alliance itself impossible. The exchange was, in fact, bitterly resented by Roumania, which only bowed to strict necessity after a vain appeal to the Powers at the Congress of Berlin.

On April 24th, 1877, Russia declared war on Turkey with the object, as the event proved, of settling the Near Eastern question on her own terms, subject to the arrangements already concluded with Austria-Hungary and Germany. In order to attack Turkish territory by land the Russian armies had to pass through Roumania, which had been united under Turkish suzerainty since 1866, under Prince Charles of Hohenzollern. It was therefore impossible for Roumania to preserve neutrality, unless she preferred to oppose by force the entry of Russian troops.

She therefore negotiated a military convention granting free passage in return for a guarantee of integrity. Russia, however, crossed the frontier before it had been ratified by the Roumanian Chamber. In the expectation of an easy victory, the Russians refused the aid of the Roumanian army which had been mobilized. The heavy defeats before Plevna, the key to any future advance across the Balkans, in July forced them to change their tune.

They called upon the Roumanian army; they even gave Prince Charles the command of the mixed force which renewed the assault upon Plevna. When the fortress finally fell in December and the Russian army advanced without serious opposition to the gates of Constantinople, Russia plainly unmasked her intentions with regard to Bessarabia. This territory Russia had been forced to cede by the Treaty of Paris (1856) to the principality of Moldavia, a separate though autonomous province of Turkey.<sup>1</sup>

<sup>1</sup> Russia herself had taken Bessarabia from Turkey by the Peace of

The object was to deny Russia access to the mouth of the Danube. The provision was in fact more important to Austria than to the belligerent Powers themselves. This loss Russia regarded as the most humiliating stipulation of the treaty, with the exception of the provisions for the neutralization of the Black Sea. She had freed herself from the latter by the Gortchakoff Circular (Oct. 1870) and intended to take the earliest opportunity of reversing the former.

Accordingly the Roumanians, who were not allowed to take part in the negotiations with Turkey which resulted in the Treaty of San Stefano, were informed by Russia that in compensation for Bessarabia they would be given the northern Dobrudja, the territory on the Black Sea contiguous to their south-eastern frontier. This suffered from three disadvantages: (i) the population was exceedingly mixed, the Roumanians themselves being in a small minority and difficult racial questions might be expected to arise; (ii) in comparison with Bessarabia the soil was swampy and barren and its natural sparseness had been increased by centuries of Turkish neglect and misrule; (iii) the southern frontier was traced so as to exclude the strong fortress of Silistria and was strategically weak. The big Bulgaria which the Treaty of San Stefano created might be a formidable aggressor.

Roumania consequently refused to recognize the transfer; her chambers voted the integrity of her national territory, and attempts were made to influence Great Britain on her behalf, when it was certain that the latter would not recognize the provisions of San Stefano.

These efforts were unavailing. Roumania was not admitted to the Berlin Congress, though her envoys were perfunctorily allowed to state their case. It had in fact been already settled, for the Russo-British Convention, which alone made the Congress possible, had already given

Bucharest in 1812. Until then it had always formed part of Turkish Moldavia.

Bessarabia to Russia;<sup>1</sup> while Austria had agreed to it in 1876 before war broke out in return for the promise of Bosnia-Herzegovina. The questions to be settled were serious and acute enough without introducing one about which no Power felt strongly.

It was obvious that some compensation must be found for Russia in Europe, and Bessarabia was much the least contentious. Moreover, the Danube Commission, the international body set up in 1856, controlled the navigation of that river so efficiently that there was little danger to commerce in allowing Russia again to hold a position at its mouth.

Finally, the prospective influence of Russia over the new and enlarged national states now existing in the Balkans was more feared by Europe than that of any other Power. It was not, therefore, distasteful to the statesmen at Berlin that Roumania should bear so bitter a grudge against the Power which might otherwise hold her in tutelage and use her as a connecting bridge to dominate the other Balkan states.

This enforced cession had in fact the natural result. Roumania fell under the predominant influence of Austria, whose rivalry with Russia in south-eastern Europe became progressively more acute. In 1883 Roumania concluded a secret treaty with Austria, who undertook to defend the former against aggression from any quarter. In return Roumania promised her aid against an attack on Austria by Russia or Serbia. By 1888 the two other members of the Triple Alliance added their guarantee. Thus Roumania became and remained until 1914 a minor member of the Triple Alliance with limited engagements but a complete guarantee against aggression.

As Bulgaria remained a protégé of Russia, the unsatisfactory character of the Dobrudja frontier was a constant source of preoccupation to the directors of Roumanian policy. Naturally, therefore, in the summer of 1913, when

<sup>1</sup> This had been published in the *Globe* newspaper, and though its authenticity was denied by Disraeli, no one attached importance to his denial.



Bulgaria was at death grips with her former allies, Greece and Serbia, in the third Balkan War, the Roumanian army crossed the Danube in armed intervention. In the dictated peace which followed, Roumania modified the frontier according to her desire, and included Silistria within it.

This action made it certain that when Roumania intervened three years later in favour of the Entente during the Great War, Bulgaria would not lose the opportunity of striking her southern flank. Roumania was thus assailed simultaneously on the west and the south, and her total defeat was consummated. The forced cession of 1878 had, indeed, a long and tragic sequel.

The cession of Venetia to France in 1866 after the war between Prussia and Italy with Austria, the last of our illustration examples, needs little comment. It was indeed no more than a legal fiction with the object of providing a sop to the pride of Austria, which made it possible for the war to be ended at the moment which Bismarck and the Emperor Francis Joseph desired.

The treaty concluded between Prussia and Italy in April 1866 had provided that the war which it was proposed to make within three months against Austria should not be terminated until Italy received Venetia. The Emperor Francis Joseph, anticipating defeat in Bohemia, had given Benedek the supreme command there. In Venetia, where he expected to be victorious, he placed for dynastic reasons his uncle the Archduke Albrecht. Thus it came about that the main Austrian armies were heavily defeated at Sadowa on July 3rd, while the Italians had been overthrown at Custozza ten days before.

The mediation of Napoleon therefore occurred very conveniently for Bismarck. It saved him from the dilemma of either continuing the war for the benefit of Italy at great risk for the future of Germany, or of tearing up the terms of the Alliance. Napoleon knew from his secret negotiations with Austria before the outbreak of war that she was prepared for the loss of Venetia. This mediation provided

her with a golden bridge. Francis Joseph was saved the humiliation of handing over his last Italian possession direct to a despised and defeated enemy. Italy had herself to endure the condescension of Napoleon in presenting her with a coveted territory which her arms had been unable to wrest from a numerically inferior army. The general result was favourable to Bismarck's policy as it made unlikely the dreaded combination of Austria, France, and Italy against the completion of German unity.

It is clear that this transaction, which was contingent upon the result of a plebiscite, can be described as a peaceful change only in a forced and technical sense.

### *B. Methods and Conditions of Cession*

#### I

Legally, every cession must be accomplished in the same way, that is to say, by an instrument which is equally binding upon the parties concerned. The steps, however, which any of the parties may take to ensure that it is binding will obviously vary in accordance with the constitution of the particular state. The Crown in Great Britain is believed to hold the prerogative of ceding territory, acquired by conquest or cession, without the consent of Parliament. It is certain that such a right would nowadays never be asserted. Treaties of cession would either be presented to Parliament for ratification, or the treaty itself would be embodied in an Act of Parliament, as in the Anglo-German Agreement Bill of 1890 or the Anglo-French Convention Bill of 1904.<sup>1</sup> In such cases Parliament could introduce amendments into the text of the treaty, which would involve the reopening of diplomatic negotiations between the countries concerned and might involve the loss of the whole treaty.

<sup>1</sup> The Crown might, however, force the hand of Parliament by publishing a proposal before its execution from which it would be impossible to recede. The offer of Cyprus to Greece in 1915 in return for joining the Allies is a case in point. As Greece refused, the offer in fact lapsed.

The French Constitution distinctly lays down that 'Nulle cession, nul échange, nulle adjonction de territoire ne peut avoir lieu qu'en vertu d'une loi'. The actual negotiation of treaties is naturally left as the province of the executive. In the United States the House of Representatives has no share in the treaty-making power, either positively or negatively. The President has the power 'by and with the advice and consent of the Senate to make treaties, provided two-thirds of the Senators present concur'. The advice of the Senate is not usually asked beforehand, though the President has power by the Constitution to do so. This, as has been already noticed, was done in 1842 with reference to the conclusion of the Maine compromise.

In 1868 the Senate rejected the treaty concluded with Denmark for the sale of the Virgin Islands, thereby delaying their acquisition by America for exactly fifty years.

It is not necessary to analyse the provisions of other constitutions. It is clear that the constitutional alternatives must be as follows:

- (i) Unrestricted right of cession by the executive.
- (ii) Subject to the preliminary advice of one or both bodies of the legislature.
- (iii) Subject to ratification in the same manner.
- (iv) Subject to the treaty itself being embodied in a law.
- (v) Subject to the consent of an extraordinary legislative assembly, e.g. in Bulgaria 'No diminution or augmentation of the national territory can take place without the consent of the Grand National Assembly', a body twice the size of the ordinary legislature.
- (vi) Conditional on a referendum from the legislature, or subject only to the ratification of the work of the executive by a plebiscite.<sup>1</sup>

<sup>1</sup> This of course refers only to a plebiscite of the ceding state, not of the territory proposed for cession which will be dealt with in a separate chapter.

As far as I know, provisions for a popular vote are part of no existing constitution except that of Lithuania.<sup>1</sup> It is, of course, possible for the constitution itself to forbid cession by declaring the territory of the state to be inalienable. This provision is to be found in the constitutions of several South and Central American Republics (e.g. Peru and Ecuador) and that of Albania expressly declares that 'its territory cannot be ceded'.

## II

The conditions of cession are generally speaking of three kinds:

(i) An equivalent must be found and agreed upon. We have already seen earlier in the chapter when dealing with the motives of cession that the equivalent need not be material. It may consist in reasons of policy, the desire to create an alliance or to foster good relations; or again, cession may be set against rights over territory, which had hitherto been challenged or denied, or which had previously belonged to the other negotiating party. Such rights may be either political and constituted by spheres of influence or protectorates, or they may be economic or commercial servitudes, such as the French fishing rights over the Newfoundland shore. The only important form of equivalent which remains to be considered is that of the sale of territory by a cash payment.<sup>2</sup>

(ii) The bargain itself may be a conditional one. Its fulfilment may be dependent upon some form of consultation of the population to be affected by the transfer. As, however, the role of the plebiscite extends beyond the mere cession of territory to cases where a new sovereignty

<sup>1</sup> The national territory of that State can be modified by way of diminution only by a consultation of the people. In Switzerland the constitution provides for a popular vote on demand for any law.

<sup>2</sup> History gives examples of territory being mortgaged and its sovereignty transferred by foreclosure on the part of the mortgagee. This, however, is not of sufficient importance to merit detailed study, nor is it a method likely to be followed under modern conditions.

is created or an old one extinguished, it must be treated in a separate chapter.

(iii) The treaty may contain provisions limiting the future full exercise of sovereignty by the state which acquires new territory. These may take two forms. They may either be promises to treat the inhabitants in some particular way, or to retain certain servitudes for the benefit of the state from whom the territory has been acquired. It will be recalled that in the Anglo-German Treaty of 1890 examples are to be found of both these types of restricting conditions in the articles dealing with Heligoland; as also in the treaty with Greece for the cession of the Ionian Islands.

The sale of territory is obviously a suitable expedient for any state which wants money, but not land, in exchange, or which cannot negotiate an exchange. In modern times it has been particularly used to enable European states, France, Spain, Russia, and Denmark, to transfer distant, expensive, precarious, or embarrassing portions of their dominions to the United States. The great American Republic has never had any territory of its own open to barter, but has been always anxious to secure that belonging to European Powers on or off the North American continent. For this it has always been prepared to offer a good price.

It is perhaps because the Americans have practically monopolized this method during the past hundred and fifty years that it is often described as sordid and out of keeping with national honour. It was in fact not uncommon in medieval history, and has tended to become more exceptional in modern times. The objection that the inhabitants are treated as so many 'cattle' applies with equal force to any transaction which involves the transfer of sovereignty over the heads of the population affected. It is of course just as easy to make the sale contingent upon the result of a plebiscite, as in any other case of cession. It is true that such sales have rarely been accompanied

with a popular consultation. This is because the territories in question have been as a rule very sparsely inhabited and undeveloped, or have contained an uncivilized coloured population with a very small European admixture.<sup>1</sup>

Curiously enough, the only modern example seems to be in the most insignificant of all transfers. In 1877 France acquired from Sweden for the modest sum of £11,000 the West Indian Island of St. Bartholomew, eight square miles in area and with a population of 2,400. They were, however, given the opportunity of expressing their desires.<sup>2</sup>

We may now by the examination of certain sales illustrate more fully the considerations which have induced them. The sale of Dunkirk in 1662 is particularly interesting as it was the last transaction of the kind by Great Britain, and extinguished the last British possession on the south side of the Channel.

The motives of the sale were double. It was inspired in the first place by a change in foreign policy, and secondly by economy. Cromwell possessed a standing army of 30,000, then the best troops in Europe. He therefore had the means, as he had also the intention, of pursuing an active policy of intervention on the Continent. As between the two great rivals, France and Spain, he favoured the former, principally because Spanish foreign policy was in his opinion dictated by religious motives and exhibited the aggressive Catholicism of the Counter-Reformation. Accordingly, in 1657, British and French soldiers fought together on the Flemish dunes for the last time until 1914 to conquer that portion of the Spanish Netherlands. Dunkirk had been allotted beforehand as the British share of

<sup>1</sup> This does not apply to the sale of Dunkirk to Louis XIV by Charles II, nor to that of Corsica by the Genoese to Louis XV. In the former case the inhabitants welcomed the transfer; in the latter a majority not merely resented it but rose in rebellion against it.

<sup>2</sup> A plebiscite was held in 1868 when Denmark agreed to sell the islands of St. Thomas and St. John to the United States. The Senate, however, refused to ratify the treaty.

conquest; with its fine harbour it was obviously a good sally-port for England into the Low Countries.

After the Restoration England's military strength declined by at least five-sixths. The Cromwellian rule had induced a hatred of a standing army which was deep-rooted and long-enduring. The country was in no mood for great continental adventure. It desired only a free hand for a naval war to crush its great commercial rivals, the Dutch. The example of Calais showed how difficult, how almost impossible, it had been to defend a Channel port against French arms in the sixteenth century. The task would be even more arduous in view of Louis XIV's vast military establishment. Moreover, English policy aimed at isolating the Dutch by maintaining French goodwill if not a French alliance. There was no more hopeful method of accomplishing this end than by the cession of the coveted port.

Dunkirk was exceedingly expensive. It cost more than £100,000 per annum, or one-twelfth of the whole estimated by Parliament to be a sufficient revenue for the Crown in 1660. As Charles was atrociously extravagant and always in lack of ready money, he welcomed the bargain by which he received £400,000 in return for the cession to Louis XIV. The sale was unpopular in England and subsequently figured as one of the articles of impeachment against Clarendon, the Minister who negotiated it.<sup>1</sup>

When England and France entered upon their second Hundred Years War with the advent of William III, Dunkirk proved the most cruel thorn in England's naval flesh. From the lair of its heavily fortified harbour privateers issued out to prey upon English shipping, and did enormous damage. A prohibition of its fortification was inserted as one of the articles of the Peace of Utrecht to which England attached the greatest value. It was constantly evaded by the French,

<sup>1</sup> Clarendon was not impeached on the general policy of the sale but for having made a bad bargain in that he sold it 'for no greater value than the said ammunition, artillery, and stores were worth'.

but repeated in every treaty until 1783, when England finally abandoned her restrictive claim. Its 'nuisance value' to France does not seem to have been suspected in 1662. It is, however, certain that Louis XIV would never have consented to any such diminution of his sovereignty.

The sale of Corsica to France by the Republic of Genoa in 1768 also illustrates Anglo-French naval rivalry from another angle—that of the Mediterranean. The first stage of British domination in that sea was the acquisition of Gibraltar, the second Minorca. These bases were well placed to prevent the junction of the Mediterranean and Atlantic fleets of France, and to hinder a Franco-Spanish concentration. The Island of Corsica would prove an excellent base for blockading Toulon, the chief Mediterranean arsenal of France. It is not surprising, therefore, that France took an intense interest in the fate of the Corsicans, who for two-thirds of the eighteenth century maintained an intermittent rebellion against their Genoese masters. As that republic could not quell the turbulent islanders, it called in first the Austrians and then the French to subdue them. This in turn led to British intervention; and throughout the War of the Austrian Succession and the Seven Years War, the destiny of the island oscillated in accordance with the Mediterranean strategy of the two great adversaries. Genoa was practically impotent to enforce her sovereign rights. In 1755 Paoli, who was Anglophil not merely from policy but from a passion for constitutional government, became President. Corsica enjoyed good order and a *de facto* independence under British suzerainty. After the Peace of Paris (1763), however, Great Britain, having defeated the French and having acquired vast responsibilities in the New World, disinterested herself in Corsica. The French returned at the invitation of Genoa. In 1767 they purchased the sovereignty of the island, drove out Paoli, and received its formal submission in 1770. Though the chances of the revolutionary war made it for two years (1794-6) a posses-



sion of the British Crown, it has since remained and has been administered as an integral part of France.

We now turn to the great series of purchases by which the United States obtained the right under international law to spread its domination across the North American continent from sea to sea.

After American independence had been recognized in 1783, the settled area hardly extended beyond the Appalachian Mountains, and the utmost claim of the most enthusiastic pioneers was that it should extend to the Mississippi,<sup>1</sup> a boundary comprising nearly thrice the expanse of territory already populated. As the whole population scarcely exceeded four millions, it might be supposed that it would for generations have neither the inclination nor capacity to absorb still vaster lands. From the first, however, the desire to control the mouth of the Mississippi with the great port of New Orleans was ardent. As the cultivated area kept continually thrusting over the western slopes of the Appalachians, the great river became increasingly important for the shipment of goods to Europe. It is true that Spain conceded to the United States by treaty in 1795 the right of free transshipment at New Orleans together with free navigation of the river. But there was no guarantee of the permanence of such a concession. Moreover, Spain claimed a right of protection over the Indians in the lands between Georgia and the Mississippi and provoked or permitted them to attack the American pioneers.<sup>2</sup> Still the Spaniards, though hostile and both despising and despised, were not an aggressive or efficient military force. The United States had nothing serious to fear from them. The situation was totally changed when Napoleon in 1800 forced Spain to exchange Louisiana for the Italian kingdom of Etruria.

<sup>1</sup> The mouth of the river was of course Spanish territory, being part of Louisiana, which Spain had acquired from France in 1769.

<sup>2</sup> By the same treaty of 1795, Spain abandoned her claims to territory north of the 31st parallel in which most of these Indians lived.

The great danger of this immense province to the United States was that except in the east it had no definite boundaries. In the hands of a ruthless organizer like Napoleon it might be used to encircle and strangle the development of the United States on the south-west and north-west. This was indeed the intention of Talleyrand, who knew the Americans well from his years in exile among them, and who at this period had the First Consul's ear in the direction of foreign policy. He had already written in 1798 that 'the Americans should be shut up within the limits which nature seems to have traced out for them'. With the advent of a general peace in Europe in 1801, Napoleon might secure a free hand to translate these colonial aspirations into facts. The treaty of cession had been kept secret, but the news leaked out in 1801 before the Spaniards had made any preparations to complete the transfer. Next year there were two ominous signs. The Spanish Governor of New Orleans withdrew the American right of free transshipment, contrary to the treaty of 1795: Napoleon dispatched a great veteran expedition to subdue the negro republic set up in San Domingo, and afterwards to enter into possession of Louisiana.

Fortunately for the United States, the precarious European truce was breaking down. Early in 1803 it became obvious to Napoleon that war with Great Britain would be renewed within a few months, while the majority of the force in San Domingo had already been destroyed by yellow fever. Accordingly he was now disposed to view favourably the coincident American offer. President Jefferson had been intensely alarmed—'The day that France takes possession of New Orleans . . . we must marry ourselves to the British fleet and nation.'<sup>1</sup> But he had no intention of throwing himself into the arms of the hereditary enemy before the *fait accompli*. In March 1803 Monroe was sent as a special envoy to Paris. In the event of a definite refusal by Napoleon to sell, his instructions bade

<sup>1</sup> To Livingston, April 18th, 1802.

him seek a British alliance. He arrived to find the matter practically settled. Napoleon had himself taken the initiative with Livingston, the American Minister. Moreover, he had offered far more than Jefferson had included either in his demands or his mind, namely, the whole of Louisiana. If the First Consul were to become 'the new Charlemagne', the master of Europe, it was futile to leave great hostages to fortune overseas to be seized at the will of the overmastering British Navy. Jefferson had not contemplated a larger purchase than that of New Orleans and the Floridas, which, in fact, still belonged to Spain. The unexpected opportunity was too magnificent to miss, and Livingston took it upon himself to open the desired negotiation with Talleyrand.

Napoleon was really breaking his treaty with Spain in making the offer, for he had formally promised not to alienate it to a third Power without the consent of the original vendor.<sup>1</sup> The scruple did not worry him, for Spain was incapable of more than a futile protest. After some haggling the whole province was turned over to America for 80,000,000 francs.<sup>2</sup>

An important clause of the treaty inserted at Napoleon's instance provided that the inhabitants were to be incorporated in the Union of the United States and admitted to all the privileges and rights of American citizens. This precedent was almost invariably followed by the United States in their later acquisitions. Apart from some fishing privileges limited to twelve years, the territory was burdened with no servitudes. The vagueness of its boundaries

<sup>1</sup> Curiously enough, the best constitutional authorities hold that the transfer was also illegal from the point of view of the American Constitution which gave neither President nor Senate power to increase the national territory. This is perhaps the only instance of two Powers making a treaty to dispose of territory which one could not legally give or the other legally take.

<sup>2</sup> Sixty millions for the purchase and 20 millions in satisfaction of existing claims on the French treasury. The stock in which the payment was to be made was to be handed over within three months of the ratification of the treaty.

from being a menace before the transfer now opened up a vast unexplored province of expansion.<sup>1</sup> It is calculated that when these boundaries had finally been determined in the course of the nineteenth century, about one million square miles had been added to the Union, including the whole of nine and the greater part of four subsequent states. The European population in 1803 is variously estimated at from sixty to eighty thousand persons. Thus the power of France passed finally out of North America, but Spain remained in the two Floridas, as hostile as before but growing progressively weaker with war at home and revolution spreading throughout her colonies. Indeed, before war with Great Britain broke out in 1812 the United States had forcibly nibbled portions of the Spanish possession; and returned to the process in 1818. Spain had not yet lost the vain hope of reconquering her South American possessions but was prepared to sell Florida which was now practically defenceless. Doubtless the United States could have seized it with little trouble, but were unwilling to do anything that might draw the hostile attention of the Holy Alliance, and might estrange British public opinion. Accordingly, Florida was sold for 5,000,000 dollars in 1819, and the frontier of Mexico (still nominally Spanish) delimited. The elimination of Spain left no place for a European Power to threaten the mouth of the Mississippi by establishing itself in the Gulf of Mexico. It also prepared the way for the recognition of the independence of the revolted colonies, and for the enunciation of the Monroe doctrine, which proved in effect if not in original intention a guarantee of that independence.

So far the expansion of the United States had been mainly pacific except for the gradual subjection of the

<sup>1</sup> The first article of the Treaty of Cession of St. Ildefonso 1800 spoke of the colony 'with the same extent that it now has in the hands of Spain, and that it had when France possessed it; and such as it should be after the treaties subsequently entered into between Spain and other States'. The United States received it on exactly the same indeterminate definition.

Indian tribes. Even here compensation was sometimes given for an agreed expropriation, as when in 1795 an annuity of 10,000 dollars was paid for part of the North-Western Territory including the sites of two famous cities, Chicago and Detroit, or when later on Georgia purchased the territory of the Cherokees.<sup>1</sup> In 1849, however, Mexico was deprived by force of arms of the coveted Pacific coast of California, together with Texas, New Mexico, and Arizona. She had rejected the preliminary offer of 25,000,000 dollars offered before hostilities by the American envoy Slidell. Though the United States thus obtained the territory by right of conquest, 15,000,000 dollars were in fact paid to the defeated. Texas was an added expense, for the intrigues of Americans had given it a puppet independence in 1845; and as compensation for its inclusion within the Federal Union it received 10,000,000 dollars in 1850.

Mexico was still to cede some further territory, but on this occasion by a sale freely and peacefully negotiated. With the acquisition of California a transcontinental railway had become possible. The struggle in Congress between the four alternative routes suggested was waged as much for political as commercial motives. The acquisition of the Mexican territories had raised in an acute form the question of the extension of slavery. When California was admitted as a free state the 'Compromise' of 1850 left undetermined the status of the territories of New Mexico and Utah. The champions of the South, therefore, desired to develop as rapidly and effectively as possible the south-west corner of the federal territory. Geography demanded

<sup>1</sup> Such sales partake rather of the nature of *ex gratia* compensation than of genuine bargains, as the vendors were in no position to enforce a real market value. The history of European expansion in Africa abounds with instances of even more derisory purchases. One of the worst bargains on record in which the vendor was a state of European origin must be the transaction of 1876 by which the Orange Free State sold its rights in the Kimberley diamond field, which were disputed with a Basuto chief, to the British Government for £90,000.

that if the railway were built from New Orleans to San Diego on the Pacific it should pass through a portion of Mexican territory south of the Gila river. The United States indeed put forward a claim, thinly substantiated, that it was included as part of Arizona within the area of cession as defined by the Treaty of 1848. Mexico would have risked a renewal of war rather than assent to this interpretation. Jefferson Davis, the future Confederate President and the right-hand man of the then President Pierce, persuaded the latter to buy the area in question, some 45,000 square miles, for 10,000,000 dollars. This purchase, known by the name of Gadsden, a southern railway promoter, completed the south-western boundary of the United States as it runs to-day.

The only direction on the Continent where the dollar might still be expected to extend the federal domain was in the far north-west. Here Russia had maintained since the eighteenth century fishing establishments along the Pacific Coast south of the Behring Straits. It was not, however, until 1821 that a ukase of Alexander I asserted exclusive Russian privileges over the coast, islands, and fishing as far south as the  $51^{\circ}$  parallel. Such a vast claim, as we have already seen, brought Russia into conflict with both Great Britain and the United States, since it included a large portion of what both countries themselves asserted to be within the Oregon Territory. Alexander gave way to the extent of settling upon  $54^{\circ} 40'$  as his southern limit by boundary treaties with the two parties.

This reduced Russian America to a superficies of nearly 600,000 square miles, over which the sovereignty of the Tzar was retained until 1867. The circumstances of the purchase effected in that year are interesting as showing how much greater was the zest of the administration for expansion than was that of public opinion. The victory of the North followed by the evacuation of Mexico by Napoleon seem to have intoxicated Seward, the Secretary of State, who was suspected, in the words of a colleague,

of desiring 'A system of indiscriminate and costly annexation'.

The sale of Alaska<sup>1</sup> was carried through with a haste which suggested that the Secretary was afraid to allow any time for an agitation to be organized against it. It was referred to the Senate on the very date on which the treaty had been signed and passed within ten days. The potential opposition of the Senate was lulled by the gratitude felt for Russian friendliness to the North during the Civil Wars. The price paid was 7,200,000 gold dollars, or an equivalent of 10 million in the war-depreciated currency of the United States. It was derided at the time as thrown away on a mass of rocks and ice, but by 1924 the estimated value of the output of the fisheries and mines alone exceeded 1,200,000,000 dollars.

The dislike of this purchase prevented Seward from achieving his other dreams of national expansion. A proposal for the acquisition of San Domingo was abandoned, and the Senate rejected the treaty concluded with Denmark for the sale of the West Indian islands of St. Thomas and St. John, desired by the Navy Department for a coal-  
ing station. The attempts of the United States to get hold of them suffered vicissitudes of fortune for a complete half-century.

In 1867 Denmark, against the will of the United States, insisted upon a plebiscite. This was made a *sine qua non* because the northern districts of Schleswig which Prussia had taken from her in 1864, were to be allowed a popular vote by the Treaty of Prague and it was thought that Denmark would seriously compromise the prospects of this vote being held, if meanwhile she voluntarily ceded any of her possessions without such a stipulation. The plebiscite was held and was almost unanimous in favour of cession, and the King of Denmark actually sent a farewell

<sup>1</sup> The name Alaska was suggested for this territory by Sumner, Chairman of the Committee of the Senate on Foreign Relations. It is said to be the corruption of a native word meaning 'peninsula'.

message to the inhabitants before the United States withdrew from the bargain.<sup>1</sup> In 1901 another treaty, this time without mention of a popular vote, was agreed upon between the two governments. This time it was the Danish Landsting which refused ratification.

Finally in 1917 the matter was concluded. The United States feared lest the islands might be acquired by Germany, and was consequently willing to bid up to a much higher figure, 25,000,000 dollars. This time a plebiscite was held in Denmark itself, but the islands were not consulted. They have since been administered by the United States Navy Department, and consequently the inhabitants do not possess the full status of United States citizenship which has been generally secured in other treaties of cession.

The conditions of cession have already received much incidental illustration in the course of this chapter. There is one which recurs almost as a matter of common form in every peaceful transfer; namely, a provision to enable the inhabitants ceded to opt for their old nationality if they so desire within a limited period. Such a choice would normally imply departure from the ceded territory. In 1877, however, France allowed those citizens of St. Bartholomew who desired to retain Swedish citizenship to remain on the island, provided they did nothing to disturb public order.

A proportionate fraction of the public debt belonging to the country ceding territory is generally assumed by the acquiring state where compensation has not been otherwise arranged. As we have seen, one-quarter of the purchase money for Louisiana was ear-marked for this purpose.

Such restrictive conditions as seriously to impair the sovereignty of the new possessor are naturally not to be looked for in a peaceful bargain. But it is not uncommon for a stipulation giving the original owner a right of

<sup>1</sup> The price then agreed upon was 7,500,000 dollars.



preemption, or of prior consent before the territory can be alienated to a third Power.<sup>1</sup> The continuance, moreover, of existing commercial or fishing rights is a common provision.

<sup>1</sup> e.g. Denmark was under an obligation not to cede or sell the West Indian Island of St. Croix on any terms to any other nation without the approval and consent of the King of France (Treaty of Copenhagen, 1733). Napoleon, as we have seen, was under the obligation, which he disregarded, by the Treaty of St. Ildefonso, 1800, not to dispose of Louisiana without the consent of Spain. In 1860 France, when acquiring Savoy from Piedmont, took over the international servitude of the demilitarization of the districts of Chablais and Faucigny imposed by the Powers in the Vienna Treaty for the benefit of Swiss neutrality in time of war.

## CHAPTER IV

# CREATION AND EXTINCTION OF SOVEREIGNTY

### *A. Its Creation*

#### I

IN the preceding chapters we have been considering changes in the distribution of territory between states, but have not dealt with cases which involve the creation of a new sovereign state or the extinction of an existing one. These latter are clearly more fundamental in character. Consequently, while as might be expected a large proportion of them have been effected by war—with which we naturally have no concern—it is also true that nearly all the residue, which can be described for our purpose as peaceful, involve varying and sometimes very considerable degrees of violence. Further, it is with these changes that the plebiscite is most intimately connected, in accordance with the doctrine expounded in theory and illustrated in practice by the French Revolution that populations have the right to decide under what sovereignty they will live.<sup>1</sup> In all instances, therefore, where a popular consultation is involved its detailed consideration will be reserved for the chapter on plebiscites, while a general account of the change as a whole will be given at this stage.

A sovereign state may be created in various ways. First by an amicable agreement with that existing state out of whose sovereignty it is made. This is very rare, and perhaps the only genuine instance is the separation of

<sup>1</sup> The sovereignty of the people as defined by the French Revolution has two meanings: (i) the determination of policy and control over the executive by the people in any given state; (ii) the right of 'self determination', to use the twentieth-century phrase, in all questions of creation, extinction, or transfer of sovereignty.

Norway from Sweden in 1905. Secondly, through the inability of the parent state to prevent it. This was at least the principal cause of the rise of Roumania and Finland to independence.<sup>1</sup> Or thirdly, as the result of external intervention which the state in question is unwilling or unable forcibly to resist. Thus the independence of Belgium was assured in 1831 by the joint intervention of Great Britain and France after the revolt had taken place, and was consummated by the Great Powers acting in concert and attaching their guarantees to the treaties in 1839. Analogously Albania was created an independent state in 1913 by an agreement between the Powers as a consequence of the success of the Balkan League against Turkey. The Powers, however, had not themselves been at war, and as they made this settlement with the express object of preventing a *casus belli* between two of their number, Russia and Austria-Hungary, it can properly be called a peaceful settlement. Finally, a great state may foster and secure the independence of a part of a weak neighbour with the object either of maintaining it as a puppet or satellite, or of absorbing it in due course within itself. The United States created Panama for the former purpose, and Texas for the latter. Critics of Great Britain and France would no doubt point to Egypt, Iraq, and Syria as similar instances of independence camouflaged for the benefit of their great protectors.<sup>2</sup>

## II

We will first turn to the classic exchange of an agreed secession, that of Norway from Sweden in 1905. In the strictest sense of the word, the secession did not create a new independent state; for Norway in the words of the

<sup>1</sup> It is not proposed to deal with Finland, as its independence was directly due to the support of German arms in 1918.

<sup>2</sup> The foundation of Liberia and the Congo Free State cannot be fitted exactly into any of these categories, being nominally at least inspired by philanthropic motives for the benefit of the negroes.

Storthing of 1814 had always regarded itself as 'a free independent and indivisible Kingdom, united with Sweden under one King'. But it created a new separate international sovereignty. Moreover, it is difficult to maintain that during the ninety-one years of that union Norway, although completely autonomous, possessed in reality the equal status of a joint independence.

The circumstances of the union were indeed inimical to this. Norway had been promised unconditionally to Sweden by the Treaty of Kiel (Jan. 1814) in return for the help given the Allies by the Crown Prince Bernadotte against his late master Napoleon. Though the Act of Union in 1815 arranged for a free settlement between the two countries, which left Norway with the fullest autonomy, it was obvious that Sweden would have had Norway whatever the views of the Norwegians.

While Norway possessed her own ministry, parliament, army, navy, and customs, the foreign relations of the union were entirely in Swedish hands and the consular service was a joint one.

As long as diplomatic relations remained in reality within the power of the King no serious difficulty arose. During the 'eighties, however, the increase in power of the Swedish parliament relieved the King of much of his direct responsibility. The Norwegians feared that the result would be increasing neglect of their own separate foreign interests. It was realized that separate diplomatic representation would destroy the unity of the dual kingdom—this aim they did not seek at that time. In consequence the chief demand became more and more insistent for a separate consular representation. It was pointed out with truth that as Sweden was a strongly protectionist country, while Norway had an extremely low tariff, the Swedish consuls often had diametrically opposed commercial interests to those of Norway. Moreover, consuls were maintained at Norwegian expense in places where Swedish interests were alone represented. The Norwegian Parliament was able

to put the more effective pressure on Sweden as the power of the King had gradually been reduced to almost a nullity by the Norwegian Storting. All kinds of embarrassments could constitutionally be put in the way of the King and the joint interests of the two countries.

In 1903 some progress towards an amicable settlement of the consular question was made. A joint communiqué from the two governments was issued stating that an agreement had been made in principle on a 'separate' service. This was subject to a satisfactory arrangement as to the limits of consular activity, and of its relations to the Foreign Office. Here lay the irrefragable stone of offence—no such arrangement could be concluded. In May 1905 the Norwegian Storting passed a law without any preliminary agreement with Sweden to establish a separate service. This the King by the terms of the Act of Union had no choice but to veto. The ministry resigned, and no alternative could be found. Whereupon the Storting took the decisive step of declaring that as the King could not form a ministry he had ceased to reign, and that the union was dissolved. This unilateral declaration was of course a revolutionary measure, from which there could be no retreat. Would Sweden peacefully accept the *fait accompli* and endeavour to make it more palatable by negotiation or would she confront it with arms? Lord Rodd, then British minister at Stockholm, has expressed his conviction that there was never any danger of the latter alternative.<sup>1</sup> Any war party was confined to a section of the Swedish nobility. If any attempt to coerce Norway failed, a hostile state in the rear would be exceedingly dangerous to Sweden always suspiciously facing a detested Russia. Even a sullen Norway periodically held down by force would involve almost equal risks. Negotiations were therefore undertaken to secure the mutual consent of both parties. In July 1905 the Swedish Riksdag agreed to the separation provided that the vote of the Storting was confirmed by

<sup>1</sup> See Rodd, *Social and Diplomatic Memoirs*, vol. iii, ch. iii.

a plebiscite and that certain conditions necessary to Swedish security were fulfilled. The plebiscite showed an almost unanimous vote for separation on a representative poll.<sup>1</sup>

It remained to conclude the safeguards demanded by Sweden. These were political, military, and economic or commercial in nature:

1. Arbitration was arranged for all disputes not affecting 'the independence, integrity and vital interests of either country'.
2. A neutral and demilitarized zone was demarcated between the two countries, and Norway undertook to raze all fortresses on her eastern border, with two ancient and historic exceptions.
3. Arrangements were made for the transit of migratory Laplanders, for goods in transit and for the use of common waterways.

On October 27th, 1905, the matter was concluded by the formal abdication of the Norwegian Crown by King Oscar of Sweden. This separation had an international sequel. During the Crimean War, 1855, Great Britain and France, anxious to secure Scandinavian assistance, guaranteed the integrity of the joint Kingdom of Norway and Sweden. But with the independence of Norway the treaty lapsed, and both countries found with uneasiness that neither of them now possessed any guarantee. In 1907 Great Britain, Germany, France, and Russia signed a treaty commonly called a guarantee of the integrity of Norway. Actually the four Powers engaged to respect that integrity themselves, and to consult together as to the appropriate measures to be taken should it be threatened or violated by another Power.<sup>2</sup> Norway for her part undertook not to cede any of her territory to another Power. In the next year Sweden was included, together with

<sup>1</sup> Affirmative 368,203, negative 184; percentage of voters 85.4.

<sup>2</sup> This wording was, of course, to prevent the suggestion that the treaty was directly aimed against Sweden.

Denmark, in the declaration maintaining the *status quo* in the Baltic,<sup>1</sup> and in the North Sea.<sup>2</sup>

The separation of Iceland from Denmark in 1918 was effected in a somewhat similar way and with even less friction. Here, however, a personal union with the Kingdom of Denmark still persists. Iceland had been practically incorporated in Norway as far back as 1280, and until the nineteenth century and the separation of Norway from Denmark, was treated as a mere dependency. During the latter period, as in so many other instances, a national feeling was fostered by education and a separate literature. This in turn made possible an organized agitation for home rule, which was granted in 1874, and in 1918 Iceland obtained recognition as a separate kingdom. Her sovereign rights are complete (she has, for example, her own national flag), while both states maintain a legation in each others capital. Iceland by her own desire is represented diplomatically abroad by Danish diplomatic agents until 1940.

### III

The history of the nineteenth century has generally indicated that occupation of territory by a European Power, particularly if the territory was situated outside Europe, proved a preliminary of absorption. The fortunes of Egypt since the British troops landed in 1882 are a notable example to the contrary. The treaty of 1936 has completed a process by which Egypt has been raised to the status of an independent state in permanent alliance with Great Britain. Though certain stages in the advance have been marked by violence and bloodshed, its final consummation has been essentially peaceful.

It is impossible here to give more than the barest summary of the well-known progress of events between 1883 and 1936.

In 1882 Egypt was a *de facto* sovereign state under the

<sup>1</sup> Signed by Germany, Russia, Sweden, and Denmark.

<sup>2</sup> Signed by Great Britain, France, Germany, Netherlands, Sweden, and Denmark.

suzerainty of the Porte. Bankruptcy, general disorder, and military revolt made European intervention inevitable for the double purpose of protecting the lives and property of European residents and the interests of bondholders in the Egyptian public debt. The British military occupation was single-handed only by accident, since France refused at the last moment to participate. Its temporary character was not merely promised but sincerely intended by Gladstone, who during his first two years of office had shown himself far more apt to curtail than to enlarge our imperial responsibilities.

Until 1914 the difference between the *de jure* and the *de facto* status of Egypt is one of the most singular in history. Nominally it remained an autonomous province of the Turkish Empire; in fact it was not merely protected but administered by Great Britain. The British agent and Consul-General, Lord Cromer, was a benevolent despot. As the army of occupation was regarded by the mass of the inhabitants as the guarantee of order and prosperity and the shield against the Sudan, the British task was not seriously hindered by internal opposition. Its chief aim was to insist upon the policy recommended by the British Government being carried through by the Egyptian ministers and governors, who were forced to resign office if they refused or evaded this advice. The most serious obstacle was the diplomatic opposition of other Powers, notably France, and the fact that the *Caisse de la dette*, which was controlled by an international commission, practically fettered Egyptian finance and prevented the money necessary for reform being available at will.

The French recognition of the peculiar British status in 1904 was shortly afterwards followed by the disappearance of the *Caisse* and the emergence of Egypt from her financial trammels. While Egyptian officials had secured wider administrative freedom before 1914 the country had made little progress towards autonomy or still less independence. In December 1914, owing to the outbreak of war with



Turkey, Egypt was proclaimed a British protectorate. Turkish suzerainty was abolished, and as a symbol of this independence the new Khedive became a Sultan. For the first time since the British occupation, the international status of the country corresponded more or less with the actual process of administration.

The course of the War, however, strongly inflamed the spirit of Egyptian nationalism. This was not only because the Allies declared themselves to be fighting for the freedom of the small nationalities. It was chiefly because the Egyptians had their own peculiar and intimate grievances against the British military authorities. The British Government had imprudently promised that Egypt should bear none of the burdens of the War. But apart from the enormous army quartered within its territory, an unofficial and illegal system of haphazard conscription of the fellaheen for non-combatant service in Palestine caused a new and general bitterness throughout the population. When, therefore, it was certain that Egypt would not be permitted to plead her cause at the Peace Conference, it is not surprising that a serious revolt took place in the spring of 1919. The long negotiations which followed were completed only by the Allenby Mission, which reached a provisional settlement in February 1922. Egypt was now declared to be an independent sovereign state, while four points were absolutely reserved to the discretion of the British Government until a joint agreement could be reached. These were:

1. The security of British imperial communications.
2. The defence of Egypt against foreign aggression.
3. The protection of foreign residents, and of minorities.
4. The Sudan.

As a result the Sultan assumed the title of King, and a bicameral constitution was adopted.

Naturally, nationalism having gained so much was intensified in boldness and sought to obtain the rest by renewed agitation and intimidation. When this campaign

reached its culmination in the murder of Sir Lee Stack, the Governor-General of the Sudan in November 1924, the peremptory British ultimatum placed the relations of the two countries again on a basis of naked force.

It required twelve years, which included the suppression of parliamentary government by the King (1928-31) and the failure of two separate attempts to negotiate a final settlement, before an agreement was reached in August 1936.

The danger of an outbreak of war between Great Britain and Italy in the autumn of 1935 brought home to the Egyptians their dependence upon British power for security against invasion and conquest. At least 60,000 Italians were encamped on the eastern frontier of Tripoli ready to move at a moment's notice. For the first time, therefore, the initiative for a negotiation to settle the vexed four points came from Cairo and not from London. This was a good augury for eventual success.

The treaty which has recently been signed gives Egypt a separate international status as a member of the League of Nations. It provides for a permanent alliance between the two countries with mutual aid in war, and arrangements for consultation and co-operation in any international emergency. In time of peace Egypt is responsible for her own military security.

The military clauses providing for the security of the Canal Zone were recognized as the key to the whole agreement, and the British Cabinet stipulated that a prior agreement must be reached on them before the discussion of other questions. British troops limited to 10,000 together with 400 pilots are to be maintained in the region south of Kantara, and moved thither within eight years. Barracks, training grounds, and communications are to be completed by the Egyptian Government within that period. As a result the mobility of the Canal garrison will be in fact greatly increased.

As regards the Sudan the position will revert practically to that settled in 1899, but interrupted after the ultimatum

of 1924. The *condominium* will be re-established by which Egypt will be responsible both for a share in the defence and administration of that territory.

As regards the protection of foreigners, Great Britain has undertaken to use her good offices to induce the other signatory Powers to agree to the abolition of the existing system of capitulations and mixed commissions. The problem being a diplomatic one affecting other European Powers, it cannot be settled immediately by an Anglo-Egyptian convention. Egypt, however, retains the right, failing such an international agreement, to denounce the system unilaterally after a year's notice.

Egypt is not the first British dependency peacefully to obtain a sovereign status. This distinction belongs to Iraq. In this case, however, the end was implicit in the beginning, for Iraq being a mandated territory, its emancipation was an essential part of the conditions under which it was handed over to the tutelage of Great Britain. But the mandatory Power was itself left to judge the appropriate time for the termination of its responsibility. Until May 1920 the territory was administered by right of conquest. Under the mandate then accepted Iraq was defined as stretching from the Persian Gulf to the north of the vilayet of Mosul, inquiries having shown that this integration was in accordance with the general wish of the population. In 1921 the Amir Feisul was proposed as King and accepted by an almost unanimous popular vote. As usual, the creation of the machinery of statehood sharpened the edge of nationalism, and a violent agitation against the mandate followed. It was obvious, however, that as long as the dispute with Turkey and the Mosul boundary remained, military considerations must be supreme. As Iraq possessed no army of its own it was entirely dependent upon British protection. When this controversy was referred for settlement to the Council of the League in 1924, it was possible to envisage more confidently a peaceful future for Iraq. Consequently the progress towards

independence became rapid. Three treaties followed within as many years, by the last of which (1927) Iraq was recognized as an independent state within the framework of the mandate. Great Britain conditionally promised to support an application for membership of the League in five years, provided that Iraq had made such progress towards her own defence and internal security as would satisfy the necessary conditions of admission. In 1930 a fourth treaty was signed. This was to become operative on the day that Iraq joined the League (the date being now definitely settled for 1932). By it an alliance was set up for twenty-five years. The two countries are to consult on a basis of full equality on all foreign affairs. Each is to aid the other in war, the contribution of Iraq being to place her territory, communications, oil, &c., at the disposal of Great Britain. Iraq is entirely responsible both for internal order and for defence against foreign aggression. Air bases are to be permanently at British disposal at Basra and west of the Euphrates. In October 1932 the League accepted Iraq's application for membership and she achieved independence, the League recognizing that the 'unusual features' in the alliance with Great Britain were justified by her geographical position. Various guarantees for the protection of minorities, and of foreigners, were imposed on the new member together with clauses relating to respect for international conventions.

In 1936 France relinquished her mandate over Syria by concluding a treaty with the new state, which in its general features follows closely the precedent set up by Great Britain and Iraq and arranges for the establishment of Syrian independence within three years. It would, of course, be absurd to maintain that these states enjoy a measure of independence comparable with that of even smaller European states. Yet they are far from mere puppets. This definition would, however, apply accurately to the little central American state of Panama. The manner of its creation in 1903 is, indeed, the most convincing proof of this statement.

In 1902 the Hay-Pauncefote Treaty had given the United States a free hand to construct an Isthmian Canal subject to the rules agreed upon in the Suez Convention, which forbade discrimination against foreign vessels. It therefore became urgent to obtain the necessary concessionary rights. The Panama route, most favoured by engineers, belonged to Colombia, with whom the United States had concluded a treaty in 1848 granting her the right of transport. Colombia was approached with a view to the sale of the strip of land necessary for the construction of the canal, and a draft treaty was signed (Jan. 1903). The Colombian Government, hoping for better terms, delayed ratification until the patience of the United States was exhausted. A stage revolution was arranged at New York, and warships sent down to Panama at the appropriate moment to fire the train. The revolution was entirely bloodless, as a party of American marines prevented the Colombian troops from interference. The pace of the little drama was very quick. The revolution occurred on November 3rd, next day independence was proclaimed, and the mushroom state<sup>1</sup> was recognized by the United States on November 6th. A fortnight later its obliging envoy signed a treaty leasing the Canal Zone in perpetuity to the United States for a sum of 10 million dollars in cash, and an annual rental of \$250,000. In 1923 a belated twinge of conscience produced a payment of 25 million dollars as compensation to Colombia.

The same powerful hands had pulled the strings when Texas emerged into an evanescent independence sixty years before. But in this case the object was not to control but to absorb the newly-fledged state. As, moreover, its independence was achieved as the result of rebellion, whereas its annexation by the United States was comparatively peaceful, an account will be reserved for the section of this chapter on extinction of sovereignty.

<sup>1</sup> Its area is 32,000 square miles, or nearly equivalent to that of Ireland: its population is less than half a million.

## IV

A new state may arise when the original owner of the territory in question is either unable or unwilling to protect its inhabitants, or is unable to prevent their secession.

Examples of the former may be given in the rise to independence of the Transvaal and the Orange River Free State. The frontier of Cape Colony acquired from the Dutch in 1814 was gradually being pushed out northwards mainly by Dutch pioneer farmers, who wished to be as independent as possible of British rule and regulations regarding the treatment of natives. This discontent was intensified by the emancipation of slaves in 1833,<sup>1</sup> and was followed by the 'great trek' of some ten thousand Boers into the remote region beyond the Vaal and into Natal. Such continual encroachment upon native territory naturally kindled even more the hatred of the Kaffirs against the white invaders, and the native wars burned up more fiercely than ever. Natal itself was annexed in 1842, but the areas which later became known as the Transvaal and the Orange Free State remained in an ambiguous and amorphous position. Legally they consisted of British colonists who had strayed over the boundary of the colony and who refused to return. They were not themselves organized as a state, and yet were not included within the British administration. They were in fact a collection of recalcitrant individuals enjoying a *de facto* independence. But the Cape Government could not escape the responsibility for defending the colony against Kaffir wars provoked by actions over which it had little control.

Of the two areas the Orange River, which contained a number of British settlers, was much the better disposed towards the Cape Government than the rigid Boers of the Transvaal. In 1846 a British Resident was accepted in

<sup>1</sup> The compensation award to slave-holders in Cape Colony of £1,250,000 was exceedingly inadequate. Many farmers were ruined and all found the greatest difficulty in procuring free native labour.

Bloemfontein, and two years later the impetuous and energetic soldier-Governor, Sir Harry Smith, annexed the territory. In this forward policy he received the support of Lord Grey, the first Colonial Secretary for many years who was willing to extend rather than reduce our imperial commitments. Parliament and public opinion were, however, too strong for him. The eighth Kaffir war which broke out in 1850 lasted for three years, and its expense was bitterly criticized at home. It led to the independence of both the South African republics. Such a result had been ardently desired in the Transvaal and was achieved in 1852 by the Sand River Convention. This instrument did not formally create an independent state but gave 'the emigrant farmers beyond the Vaal the right to govern themselves without any interference on the part of H.M. Government', and the promise that 'no encroachment shall be made by the said Government on the territory beyond to the north of the Vaal River'. The Orange River colonists, on the contrary, were very unwilling to lose British protection. Their elected delegates strongly protested against the decision of the government. But the mind of the Cabinet was made up and the Bloemfontein Convention of 1854 forced independence upon its reluctant recipients. In this document the inhabitants are termed without any reservation as 'to all intents and purposes a free and independent people'.

In both cases it is stipulated that slavery shall not exist in these new states.

The Orange Free State maintained its independence with little friction until the outbreak of the Great Boer War in 1899. The fortunes of the Transvaal were much more chequered. By the middle 'seventies the country had become practically bankrupt: its paper money was depreciated to less than a fourth of its nominal value, while a native war ended (1876) in disastrous defeat, and a more terrible danger overhung from the military power of the Zulus under Cetewayo.

It so happened that the British Cabinet was at this moment preparing for a federation of South Africa in which it was thought necessary to include the Transvaal. Sir Theophilus Shepstone, the British High Commissioner, being empowered to annex the country if desired by the inhabitants, actually did so in spite of their protests (1877). The independent state was reduced to the position of a Crown Colony. These protests were more or less half-hearted as long as the Zulus remained unsubdued. After they had been crushed in 1879 the suspicion and dislike of the backveldt Boer for British rule found vent in open rebellion. The subsequent vicissitudes of the Transvaal through renewed independence to annexation in 1902 do not belong to the history of peaceful change.

The coalescence of the two tributary principalities of Moldavia and Wallachia within the state of Roumania illustrates the complete inability of Turkey, the suzerain Power, to enforce its rights in view of the disinclination of the signatory Powers to the Treaty of Paris, 1856, to resist a *fait accompli*. It had been laid down that the two provinces, while continuing to pay tribute to the Porte, should be placed under the guarantee of the Great Powers; no individual Power to have the special rights of interference which Russia had previously enjoyed. They were to possess an independent and national administration, and a European commission, including a representative from Turkey, was to study the basis of their future organization. A national assembly in either province was to be summoned as soon as possible to express its wishes on this subject. It will be seen that union, though not definitely excluded, was not expressly mentioned. This was because the Powers were sharply divided in sentiment. Austria was strongly opposed to any form of union. Her object was to maintain a paramount influence over the principalities by perpetuating their division. British opposition, while less extreme, was based on a dislike of permitting anything to happen which was likely to



weaken or displease Turkey, whose integrity she had just guaranteed.<sup>1</sup>

On the other hand, France and Russia for different reasons were vehemently on the side of union. Russia desired a comparatively strong state north of the Danube which could be expected to stand up to Austria. She also saw that the more completely the provinces were detached from Turkey the more feasible might be the retrocession of southern Bessarabia. The loss of this district in 1856 had been regarded as scarcely less humiliating than the enforced neutralization of the Black Sea.

The policy of France was determined by more complicated motives. Napoleon was anxious, as the negotiations at Paris had so pointedly shown, to recover close relations with Russia. The Latin island of Roumanians in the midst of Slavdom had always cultivated an intellectual alliance with Paris, and this intimacy had been reciprocated there. 'Whether she accepts or repudiates it, France has there on the banks of the Danube an inevitable clientele, which attaches itself to her as the head of the Latin nations, and as its political metropolis.'<sup>2</sup>

Policy, sentiment, and the gospel of nationality so fervently preached by the Second Empire, all combined to direct the aims of French diplomacy towards the achievement of Roumanian unity. The Porte was naturally utterly opposed to any such thing, and used its position as suzerain to evade or delay all measures likely to promote it. It was not until 1858 that the divans or assemblies of each principality had a fair opportunity to vote for the desired union. The commission then drew up its report, and after much haggling between Great Britain and France a new constitution was agreed upon by the Powers (Aug. 1858). This gave

<sup>1</sup> This treaty, known as the Tripartite Treaty between Great Britain, France, and Austria, was the most exacting form of guarantee known to international law, being 'joint and several'. It did not, however, prevent the dismemberment of Turkey in 1878.

<sup>2</sup> Report of French Consul at Bucharest in 1848 quoted by Seton Watson, *History of the Roumanians*, p. 240.

the provinces the title of 'The United Principalities of Moldavia and Wallachia', and kept two princes and separate governments. But *en revanche* a central commission was set up, equally divided in representation from the two provinces, with powers to prepare unitary legislation. Moreover, though the two armies were distinct they were organized on a completely uniform basis. The cause of union had obviously taken a great stride forward. It was soon to take another. New hospodars or governors had now to be chosen to preside over the new constitution for either province. The Moldavian Assembly was the first to vote, and, much to the general surprise, finally selected an obscure colonel named Nicholas Couza, a very minor noble who is said to have fainted on hearing of his own elevation. If so, he speedily recovered and allowed himself within a fortnight to be similarly honoured by Wallachia. The Roumanians had driven a coach through the constitution of 1858 by ingeniously electing the same man to the two vacant chairs. What would be the reactions of Europe? Within a few months the concert was completely broken up by the Franco-Austrian War and the chancelleries were concerned with more pressing matters than the impudence of the Roumanians. The *fait accompli* was accepted; the Sultan was forced to invest Couza 'as a special exception'. This deceived nobody, and within three years a single assembly sitting at Bucharest became the organ of legislation for the two principalities; the personal union had become to all intents and purposes a real union.<sup>1</sup> But as might have been anticipated, the position of Couza was exceedingly difficult and insecure. Any native prince would have had a hard time; the corruption and inexperience of Roumanian politicians made constitutional government a precarious farce. Couza had no advantage of prior prestige, he had been elected not as a man but as a symbol. A

<sup>1</sup> Couza's proclamation begins: 'Roumania's union is accomplished. The Roumanian nationality is founded.' And ends: 'You have your fatherland; you know how to make it strong—Long live Roumania.'

symbol is not always a good practical instrument. In 1864, faithful to the French model, he effected a *coup d'état* and submitted to the people a new constitution. It was accepted by the very suspicious majority of 682,621 to 1,307. The new constitution was animated by Napoleonic ideas, that is to say, it made the executive inferior to the legislative by giving the former all initiative and based itself on a popular franchise of illiterate peasants, who could be readily led or controlled. 'The day an effort is made to overthrow me, I shall have three million peasants with me.' This was, of course, entirely illegal from the point of view of Roumania's international relationships, since the constitution thus violated had been settled by the Powers. But as Couza well knew, they had no power of uniting to intervene. As virtual dictator the Prince, accepting as inevitable the jealous hatred of the nobles and conservatives, devoted himself to agrarian reform and the establishment of elementary education. His position, however, steadily weakened. Flauntingly immoral in private life, he was naturally lacking in regular energy, and was surrounded by a corrupt gang. In February 1866 an army plot procured his abdication and he was spirited across the frontier. The experiment of a native prince had failed. It seemed also as if the experiment in provisional unity might fail. A serious agitation for separation broke out in more primitive Moldavia, where the peasants considered themselves to be exploited by Wallachian crooks. Still, such national bonds so painfully forged are seldom broken out of pique. It was decided to obtain a foreign prince. Such a man, especially if connected with one of the great ruling houses, would be able to speak to the Powers with more prestige, and would be less likely to endure for long the yoke of Turkish suzerainty.<sup>1</sup> The sooner the choice was made the better,

<sup>1</sup> At his private interview with King William before starting for Roumania Prince Charles said that he was ready to recognize Turkish suzerainty for the moment, but with the tacit resolve that he would free himself from it by force of arms and conquer full independence on the battlefield.

for such an election would be a still more flagrant defiance of the battered settlement of 1858. Experience has shown that it is always wisest to face Europe with a *fait accompli*. It was the more urgent because the Powers in their uneasy attempts to avert the Austro-Prussian War were considering all kinds of schemes for compensating Austria in south-eastern Europe. After devious negotiations, into which we need not enter, the Roumanian Provisional Government fixed upon Prince Charles of Hohenzollern. It is one of history's ironies that Napoleon was the prime mover in this selection, while he made the candidature of the younger brother Leopold for Spain a *casus belli* in 1870. This branch of the Hohenzollerns was in fact closely connected with the Bonaparte family.<sup>1</sup> Britain had now given up all attempts to maintain the *status quo* and disavowed any intention of imposing on the Roumanians 'a state of affairs repugnant to them'. Austrian opposition was neutralized by fear of imminent war with Prussia. In April a plebiscite was staged which elected Prince Charles by 685,969 votes against 224. The Prince on Bismarck's advice avoided embarrassing the head of his family, King William of Prussia, by requesting his official permission, but decided to obey the summons. The European Conference was still sitting and had reached no decision when Charles arrived at Turnu-Severin after a hazardous journey in disguise through Austria. The Porte, foreseeing that no effective opposition could be offered by Roumania, considered the extreme move of defying a divided Europe by moving across the Danube the troops massed there. Roumania was in fact, as Charles instantly recognized, practically helpless. But when that peril passed by, the new status was assured. Charles saw to the creation of a new liberal constitution and threw himself into the task of organizing a virtual chaos. Roumania had now only to wait her opportunity for securing complete independence. This opportunity was the extremity of Turkey,

<sup>1</sup> Through Joachim Murat and the Beauharnais.

which came in 1877. Roumanian aspirations were officially sealed by the Treaty of Berlin, which, however, qualified the status of independence by the first detailed clauses for the protection of minorities in recent history.

The passive acceptance by Turkey of all the earlier stages of Roumanian progress was due to prudence rather than impotence. There is no doubt that her armies could have conquered the principalities had the Concert of Europe allowed their entry. But in 1913 she was completely incapable of preventing the independence of Albania. This independence was not determined by the Powers in a spirit of hostility to Turkey, but to prevent the further aggrandizement of Serbia and Montenegro. This would have been resisted by Austria with arms, and as Russia would have supported Serbia, a general European war would have been unleashed. As, therefore, this state was created to prevent war it may be described as a peaceful change. But it would not have been created at that moment except for the war of the Balkan League against Turkey.

The swift collapse of Turkish resistance in the autumn of 1912 brought Serbia to the Adriatic coast in November by the conquest of Durazzo. Both Austria and Italy were agreed in refusing her an Adriatic port. Largely through the influence of Germany, Austria was dissuaded from attacking Serbia; and the Powers agreed in principle to set up an independent Albania.<sup>1</sup> After the second Balkan war broke out early in 1913 the Allies continued their successes, and in April Montenegro seized Scutari. This town was regarded by Austria as a key port in northern Albania, and the Powers forced its evacuation by Montenegro with a naval blockade of her coasts. During the summer, while the four Christian states were engaged in a ferocious struggle over the partition of Turkish spoil, the Ambassadors' Conference of the Great Powers was in session in London

<sup>1</sup> The independence of Albania had been already proclaimed on November 28th, 1912, by an Albanian notable inspired by Austria and Italy.

under the presidency of Sir Edward Grey. The three Powers not directly affected by the change in the balance of power in the Near East—Great Britain, France, and Germany—worked together harmoniously to provide such a settlement for Albania as would be acceptable to Austria and Russia, and so to organize the new state as to give it some hope of permanence. This was exceedingly difficult, as the mountaineers were the most turbulent and savage population in Europe, while Greece and Serbia were intriguing in the north and south of this prospective new state. The frontiers were settled in July 1913<sup>1</sup> subject to delimitation on the north and south by boundary commissions, while Admiral Burney's bluejackets were landed to play the policemen for Europe. In March 1914 a German Prince, William of Wied, who had been induced by the Powers to sit on the uneasy throne, landed in Albania and took the national title of Mpret.<sup>2</sup> He was, however, ejected soon after the outbreak of the Great War, during which large parts of Albania were occupied by Italy and Austria. Albania did not enter upon a period of even comparative stability until the election of Zog as President in 1925. This ruler assumed the title of King in 1928 and enforced order under the protection of Italy.

The creation of the kingdom of Belgium (1830-9) is the most remarkable example of the success of the Great Powers in creating, demarcating, and organizing the conditions of a new sovereign state. Belgium was the product of revolution, which was sufficiently successful to create a *de facto* separation from Holland. But its success was not so definite as to make the task of an attempted reconquest hopeless, or to dissuade interference by other Powers who desired to re-establish the *status quo*.

The Belgian revolution was peculiarly provocative to

<sup>1</sup> It is estimated that only about half the Albanian race was included within these frontiers.

<sup>2</sup> He was guaranteed an international loan, the international contingents were to remain for the present in Albania, and officers were lent to organize a national militia.

conservative forces in Europe. For it was the first breach made in the Treaty of Vienna, that great testament of conservatism. Secondly, it was inspired by the same allied spirit of liberalism and nationality which Austria had repressed by force of arms in Italy and France in Spain. Thirdly, it might naturally be expected to accrue to the benefit of France, who had been so carefully confined within the restricted frontiers of 1815, believed to be necessary for the security and peace of Europe.

Moreover, the three eastern Powers (Russia, Austria, and Prussia) had emphatically declared their right in the name of the Holy Alliance to interfere forcefully to put down revolution in any state, whether invited to do so or not.<sup>1</sup> It was therefore probable that such an action could be prevented only if the two parliamentary Powers, Great Britain and France, would show a united front. But was this likely or even possible? On a short-sighted view the revolt was France's opportunity. She had possessed Belgium between 1792 and 1815; Antwerp was the most valuable of the harbours she had held in the north.<sup>2</sup> French public opinion regarded the new Belgium as the product of the July revolution and destined to be France's vassal, if not incorporated within her territory.

On the other hand, French encroachment in the Netherlands, or even an attempt to settle the Belgian question single-handed, would probably mean war with Great Britain. Louis-Philippe had no friends on the Continent, and he realized that unless he could get support over the Channel his chances of survival would be poor indeed. He had at once wisely sent as ambassador to London the aged Talleyrand, the most subtle and experienced of all European diplomats, who was firmly convinced of the necessity of a British Entente. The chances of such an understanding

<sup>1</sup> By the Troppau Protocol of 1820.

<sup>2</sup> A plan for the annexation of Belgium as part of a general reconstruction of Europe had actually been adopted by Charles X on the initiative of his last Premier, Polignac, in 1829.

were improved by the accession to power of Grey's Whig Ministry in November 1830. Palmerston, the new Foreign Secretary, distrusted French ambitions, but realizing that Louis-Philippe was essentially pacific, he knew exactly when to indulge in such plain speaking as would leave France the alternative of risking a war or following the British lead. For if the two countries would act together their path was clear. Russia was engaged after November 1830 in painfully subduing the desperate revolt of Poland—Austria was similarly engaged with Italian rebels. Anxious as the King of Prussia was to help Holland, both for family and public reasons, he would certainly not venture on a single-handed intervention if the two western Powers held together.

The union of Belgium with Holland had been a cardinal point of British policy in 1815. If the former was now to be made independent, its independence must be made real and guaranteed against French encroachment. From this ground Palmerston never shifted.

The Five Power Conference which met in London (Nov. 1830) showed exemplary speed in arriving at an agreement on the bases of a separation between Holland and Belgium in little more than two months (Jan. 27, 1831). But it took eight more years to translate these principles into their practical application and to induce Holland and Belgium to agree to them. The bases of separation were as follows:

1. Holland was to consist of the territories possessed by her in 1790 together with the Grand Duchy of Luxembourg, which the King held by a separate title as a member of the German Confederation. Belgium was defined as the remainder of the territory comprised within the Kingdom of the Netherlands between 1815 and 1830.

2. The new state to be a constitutional monarchy.

3. Its neutrality to be guaranteed by the five Great Powers.

4. Belgium to take over half the Dutch debt in return



for the right of free trade with the Dutch colonies; while the Scheldt was to remain open to the trade of all nations, Antwerp being *uniquement un port de commerce*.

Of these conditions, that referring to the debt alone proved comparatively uncontentious. The first was the thorniest problem of all and was mainly responsible for the delay of the definitive settlement for nearly nine years.

The limits of Belgium were drawn as described above to prevent any of the Great Powers (which in effect meant France) from gaining any territorial advantage. This was a bitter pill for Louis-Philippe, but it had to be swallowed. Consequently it was not jealousies between the Great Powers which delayed the territorial settlement, but the alternate recalcitrance of Holland and Belgium. The Dutch accepted the original proposal of the Concert as to the future frontiers; Belgium, however, refused. She was actually in possession of the Grand Duchy of Luxembourg and of most of Limburg, these districts having joined in the revolt of 1830. As usual, the possessor benefited, for the Concert was not prepared to drive the Belgians out.<sup>1</sup> Consequently in June 1831 the territorial articles were revised in favour of Belgium, who received a share of Limburg, while the question of Luxembourg was left open. This time it was the turn of the Dutch to refuse, and then King William, with a surprising disregard for his great mentors, invaded Belgium and heavily defeated the half-trained levies which opposed him. French troops were rushed in to prevent the occupation of Brussels. Louis-Philippe tried to bargain with Palmerston for the demolition of the fortresses constructed against France in 1815 as the price of military withdrawal. Threats of war had to be employed to bring him back into step. The Powers had to try again. This time they divided Luxembourg, giving the western half, which is mainly French-speaking,

<sup>1</sup> Belgium had now the advantage of a king, Leopold, to represent her cause. Leopold, being the British candidate, received a favourable hearing from Palmerston.

to Belgium, and compensating Holland with a larger slice of Limburg. These were, in fact, to prove the definitive frontiers, but the twenty-four articles which embodied them had much rough weather before they finally reached port. Belgium accepted but Holland again remained obdurate. The stubborn King William was also in possession of territory which the Powers had assigned to Belgium, the key-citadel of Antwerp. Relying on the belief that an agreement to coerce him would prove impossible, he hoped by sitting tight to force a revision in his favour. He was speedily undeceived. Palmerston saw that this protracted deadlock threatened a European war. While the three eastern Powers were prepared to go no farther than 'financial and economic sanctions',<sup>1</sup> he was determined to take the risk of military co-operation with the French. He lessened that risk by giving Louis-Philippe beforehand that *succès d'estime* so ardently desired for prestige's sake. The four Powers as signatories of the Quadruple Alliance of 1815 undertook to demolish a number of the fortresses on the southern frontier of Belgium which had been built and maintained against France. Finally the British fleet blockaded the Dutch coast, while a French army besieged Antwerp. Even the fall of that fortress did not lead King William to sign a definitive treaty. He merely engaged not to make war on Belgium before a final settlement. In consequence Belgium remained in *de facto* possession of Luxembourg and Limburg for the next six years. The Dutch king finally realized the dangers to Holland of such a semi-permanent arrangement and announced his readiness to sign in 1838. The Belgians now made every kind of vociferous resistance short of an actual refusal. It was not until April 1839 that the final treaty received the signatures of the five Great and two Small Powers.

The other points in the Belgian settlement can be shortly summarized. A monarchy was naturally enforced upon

<sup>1</sup> To take the form of authorizing Belgium not to pay over her share of the Dutch debt until Holland proved obedient.

the new state rather than a republic, which was then associated with turbulence and revolution. The stipulation that it should be constitutional was in accordance with the leading part taken by the two western liberal Powers. The admirable constitution drawn up by the Belgians remained almost unaltered until recent times as a charter and example to other states seeking written guarantees of liberalism.

The choice of a king was more difficult. At French instigation the Belgians first elected the Duc de Nemours, Louis-Philippe's second son; but Palmerston was in no mood to accept so compromising a *fait accompli*, and successfully promoted the claims of Leopold of Saxe-Coburg, Queen Victoria's uncle and mentor. The wisdom of this choice was abundantly illustrated by his sagacious reign.

To neutralize Belgium was an obvious course. It had already been taken in 1815 as regards Switzerland; and the flat low countries were a far more inviting field for French ambition. The Quadruple Alliance of 1815, still legally in existence, had provided an implicit guarantee of the Vienna settlement as against France. This new undertaking merely emphasized the peculiar importance which the Powers attached to this corner of Europe. The neutrality of Belgium was aimed against France, who was prudently included within the circle of guarantors. It was, however, equally effective in reducing the length of the French frontier open to attack, and it was this aspect of the matter which occupied the attention of Europe during the generation before 1914.

The guarantee of neutrality was not 'joint and several', the most stringent form known to international law. This does not seem to have implied any deliberate weakening of the obligations incurred, as in the 'collective' guarantee to Luxembourg in 1867 as interpreted by Great Britain. It was rather due to the conviction of the guaranteeing states (with the exception of France) that each had a vital interest in its maintenance, which did not require a more precise definition.

It should be noted that while Belgium was bound to maintain neutrality towards other states, she was deprived neither of an army nor of the right of fortification<sup>1</sup> in the interests of her own self-defence. This is in contrast with the treatment of Luxembourg in 1867, which was deprived by demilitarizing restrictions of even such limited capacity as she might possess of resisting an invader.

The creation of Belgium was due mainly to Palmerston. It is, perhaps, his greatest diplomatic achievement and best illustrates his gifts of statesmanship. He knew from the first what he wanted, and adapted his means accordingly. Firm on essentials, he never haggled about secondary points. He never left the French in any doubt as to his intention, and his plain, even blunt, speaking was never used for provocation but to prevent equivocation. The whole affair also shows strikingly the power of prestige which Great Britain had inherited from her resistance to Napoleon. It is probable that the actual military and naval force then available was never so much out of proportion with the boldness of British policy and the results which it achieved.

*Ex Africa semper aliquid novi.* Liberia and the Congo Free States in their different ways are both unique creations of sovereignty. Liberia, unlike Haiti, the other negro republic, was not the product of a successful rebellion against white masters, but of a philanthropic enterprise.

In 1821 a settlement of freed American slaves was founded on the West African coast south of Sierra Leone, and was fostered by the American Colonization Society. The American negroes, who numbered a few thousands,<sup>2</sup> gradually evolved a constitution by the help of white governors appointed by the Society, and extended a kind of authority over the surrounding country. In 1847, after a referendum had been taken, an independent state was pro-

<sup>1</sup> This must be qualified by the proviso already mentioned that some of the southern fortresses were dismantled, while Antwerp, being purely a commercial port, could not be made a naval base.

<sup>2</sup> In 1828, 2,381; there are reckoned now to be some 20,000 descendants of the liberated slaves out of a population loosely calculated at 1,500,000.

claimed by the title of Liberia, which extended over some 40,000 square miles of territory. It was recognized by the more important Powers with surprising speed, and has ever since maintained itself, and is now the only native state in Africa, except Egypt, which has had the fortune to escape extinction or complete control by Europeans. The United States has always shown a particular protecting interest in it, and has controlled its finances since 1912.

The constitution of 1847 is an almost slavish copy of that of the United States and has remained practically unaltered. The country, however, has not the reputation of enjoying those advantages which it was hoped that such a model would naturally bestow. The declaration of independence which preceded it sets out with a romantic and somewhat pathetic flamboyance the ideals of a free negro race, master of its own destinies. The aspirations of the Liberians are to exercise and improve all those faculties which give dignity to man, to cherish the fire of an honourable ambition, and to satisfy the aspirations planted by the Creator in every human heart; to show those who despise the black race that the nature of both is the same, and that both are capable of every improvement in all that adorns and dignifies humanity.

Liberia was the product of the pure and disinterested philanthropy of a society of American whites. The Congo Free State, on the other hand, was created under the camouflage of altruism to mask the selfish rapacity of a European sovereign.

In 1876 King Leopold II of Belgium held a geographical conference at Brussels which founded an International Association for the exploration and civilization of Africa. The Belgian committee for this purpose soon monopolized activities towards the furthering of this end. Leopold obtained the service of the famous explorer Stanley, who was created the agent of a new committee styled the International Association of the Congo. The adjective concealed a purely Belgian enterprise. For the next five years

(1879-84) Stanley systematically penetrated the Congo Basin, and signed treaties with a number of native chiefs. By 1884 this vast activity had created an international problem, demanding speedy solution. The Portuguese, supported by Great Britain, were claiming sovereignty over the Congo mouth. Leopold was determined that his future domain should not be so cut off from the sea. It had already acquired sufficient resemblance to a state to have received the recognition of the United States and of Germany, before a conference was summoned to Berlin in November 1884 to decide its status and boundaries by international instrument. During the conference the recognition by almost all the European Powers followed. The conference did not therefore create the new sovereignty, but regulated it in the following ways:

1. Its boundaries were defined by the watersheds of the tributaries of the Congo and Nile in the north, on the east by the eastern affluents of Lake Tanganyika, and on the south by those of the Zambezi. This included territory of about one million square miles. The boundaries were more precisely determined by a series of separate conventions with the limitrophe Powers, Great Britain, France, and Portugal.

2. The state was to be exempt from warfare and undertook to suppress slavery, and to promote the welfare of the natives, under the supervision of an international commission.

3. The whole area was to be open without restriction to the trade of all nations, navigation on the rivers being also free.

It will be seen that the new state still retained the philanthropic character of the original association which promoted it.<sup>1</sup>

Unhappily, however, it now passed into the personal clutches of Leopold. The Belgian Chamber had no desire

<sup>1</sup> The formal neutralization was not the work of the Congress but was a unilateral declaration by King Leopold some months later.

for colonial responsibilities, and in authorizing their king to accept the sovereignty stipulated that the union with Belgium should be 'exclusively personal'.

Within a few years the provisions of the Congo Act were cynically and flagrantly broken. Practically the whole area became the closest monopoly. The collection of ivory and rubber involved methods of cruelty and slavery far more intensively organized than in any other part of Africa. Leopold himself reserved more than one-tenth of the whole state, being the richest portion, as a *domaine de la couronne*, from which he sucked enormous wealth. Leopold, by cunningly making public in 1889 the fact that he intended to leave the Free State by will to Belgium, extracted various loans from the Chamber free of interest for the construction of railways, and enormous compensation when it was finally annexed by Belgium in 1908. The annexation was the result of belated inquiries by the Powers, particularly Great Britain, which revealed the horrible tyranny exercised by the king for his personal profit. Sir Edward Grey publicly proclaimed in the House of Commons a few months before the annexation that the Free State 'had morally forfeited every right to international recognition'. He might have added that the legal forfeiture was no less complete. Since 1908 the territory has been administered by the Belgian Colonial Office.

It is recorded that Cecil Rhodes, after emerging from an interview with King Leopold, said to a friend, 'I tell you that man is Satan himself'. Few men in history can be responsible for so much human suffering so callously inflicted for so sordid a motive.

## B. *Extinction*

### I

The extinction of sovereignty is the collective death of the state. In modern times at least violent death has been much less common than suicide. No great state has suffered

such a fate except Poland, itself destined to re-emerge after an interval of 125 years. On the other hand, since the French Revolution, and in particular during the middle of the nineteenth century, there have been numerous examples of the voluntary fusion of small sovereign units within a greater whole. A plebiscite has been the normal though not invariable precursor of such a transformation.

These mergers might be compared to the absorption of the small firm by its more powerful rival, so conspicuous a feature of nineteenth-century business. Capitalism has been a great amalgamator. Doubtless it is true that the revolution in communications and the enormous expansion of trade produce conditions favourable to great states. But the comparison must not be pushed far. Experience shows that small states will seldom if ever extinguish themselves in a larger simply to become richer. On the contrary they will often endure a poverty otherwise avoidable in order to maintain their independence. States, like individuals, may be devoid of ambition and deliberately prefer the obscurity of the *fallentis semita vitae*. Luxembourg,<sup>1</sup> Monaco, Andorra, and San Marino are obvious examples in Europe to-day. The desire for a share in power, to belong to a state which counts in the world, has, however, often been a compelling motive. Yet it may be doubted whether the attraction of power by itself is ever sufficient to impel union. It requires to be reinforced by some positive sense of a common interest and belief in a common purpose. So in the long run extinction of sovereignty may generally be explained by the idea of nationality of which no exhaustive definition can ever be given. Nationality no doubt can most often be expressed in terms of a common language, which is frequently misinterpreted as implying also a community of race. But sometimes a common culture, a belief in similar

<sup>1</sup> The Luxembourg national song is said to contain these words: 'We want to remain as we are, we do not want to become Prussians.'



political ideals, or the glamour of historic memories may be no less important.

Yet however that may be, it is generally true that an independent people resigns its sovereignty rather for spiritual than material interests. It is also true that such unions have nearly always occurred in times of spiritual unrest and physical violence, and that their consummation has been hastened by war and revolution. In fact there is no part of our subject where it is more difficult clearly to decide what is and what is not peaceful. On the other hand, it is easy to see whether or not the change was desired,<sup>1</sup> a point often left in doubt when the cession of territory is in question.

It is obvious that the impulse towards union may come either from the absorber or from the absorbed, and further that the results may not be simply the enlargement of an existing state but the creation of a new state. The agitation for the union of Avignon with France was undoubtedly seed sown by the French revolutionaries, which fell on fertile soil; whereas the desire of the Lombards for fusion with Piedmont was imperfectly reciprocated there until 1848. Central and southern Italy would never have been prepared to surrender their independence for *les beaux yeux* of an enlarged Piedmont; their intention, translated into accomplishment was to form part of a united Italy. Similarly both Serbia and Montenegro lost their separate individualism in the post-war creation of Yugoslavia.

Finally, a union though technically peaceful may be brought about by the veiled coercion of the stronger, and the result suggests merely a sullen acquiescence in the inevitable, as in the annexation of Korea by Japan in 1910, or to take humbler instances, as Mulhouse and Geneva were squeezed into the French Republic by economic pressure.

<sup>1</sup> This is true at least of modern times. When a sovereignty was extinguished by marriage or inheritance, (as, for example, Brittany and Navarre were merged in France), it is as difficult, in default of a popular consultation, to decide what were the feelings of the transferred population, as in cases of cession.

## II

The French Revolution and the Napoleonic wars wrought havoc with the small states of Europe, which had survived in such quantities from the Middle Ages. Some, like Venice and Genoa, were extinguished by brute force; hundreds of others within the Holy Roman Empire were most decorously suffocated for the benefit of the great; there were incorporated into France by the express vote of their inhabitants, Avignon, Mulhouse, and Geneva.

Avignon and the Comtat Venaissin, the surrounding region on the left bank of the Rhône, were not strictly a sovereign state but a portion of the Papal Dominions,<sup>1</sup> governed separately by a Vice-Legate with wide powers. As, however, his authority had been repudiated by the majority of inhabitants before the union with France took place in 1791, the plebiscite which preceded it may be considered as the act of a *de facto* sovereign body.

Avignon was a particularly annoying enclave in French territory. It interrupted the communications between Lyon and Marseilles on the left bank of the Rhône; it controlled the confluence of the Durance with the Rhône, and hampered French defensive measures on the south-eastern frontier. Moreover, as it was shockingly governed, it provided a safe nest for swarms of brigands and smugglers. It was therefore very natural that France should covet it. The revolution in 1789 soon spread, particularly after the news of the abolition of feudal dues on August 10th had penetrated thither; and by the late autumn members of the National Assembly were raising the question of a 'reunion'. At the moment the claim was based on the alleged defectiveness of the papal title. In June 1790 the civil violence reached a head, the Legate was driven out of Avignon and took refuge in the reactionary little town of Carpentras in the hills. The districts controlled by

<sup>1</sup> The French kings denied that the Papacy possessed Avignon as sovereign owners, and regarded the title as that of a mortgagee.

Avignon voted in succession their independence and union with France. The French Assembly refused to accept this vote as being held under conditions of violence. It was at the time under Mirabeau's influence anxious to avoid European complications, and had just denounced all wars *en voie de conquête*, to soothe the apprehension aroused abroad by the annexionist propaganda of the extremists. The only result was the continuance of civil war, the men of Avignon under the leadership of a sinister individual nicknamed Jean Coupe-tête being always the aggressors. In May, 1791, the Assembly sent three mediators into the territory together with French National Guards, and a treaty of peace was drawn up providing for a popular vote under fair and orderly conditions. The details of this first plebiscite of modern times will be discussed in the appropriate chapter. The total number of voters was not recorded, but the number of communes voting for France showed a majority of nearly three to one, representing a fivefold preponderance of population.<sup>1</sup>

Meanwhile at Paris the spirit of the Assembly had grown much bolder. The flight to Varennes (June 20th, 1791) went far to convince Frenchmen that Louis was in league with foreign Powers. The declaration of Pillnitz two months later strengthened that conviction, and produced a spirit in France which no longer shrank from a bold foreign policy. On September 12th, the day after Louis XVI gave a last sign of rallying to the Revolution by swearing fidelity to the new constitution, the Assembly voted the 'reunion' of Avignon and the Comtat with France.<sup>2</sup> This was recognized as a challenge to Europe. If treaties were to be overridden in the name of the 'sacred and

<sup>1</sup> The figures are hotly disputed. If the communes which abstained from voting are left out of account this figure is correct. If, on the other hand, their population is added to the papal score, the French majority is reduced to two to one.

<sup>2</sup> The annexation was not recognized by the Pope until the Treaty of Tolentino, 1797, when he was not in a position to refuse any demand made by the French.

imprescriptible rights of the people', France might proceed to devour with an equally good claim all those small French-speaking areas, attracted by revolutionary doctrines, which surrounded her on the north-east and east. The Austrian Ambassador wrote:

'As a result of this behaviour France will soon be in a real state of war with all governments. She will threaten them incessantly with internal revolutions, and these revolutions will bring her in as a conqueror. This was the system of Rome in dethroning kings when the peoples placed themselves under her protection.'

In short, the importance of the acquisition of Avignon lay not in itself but as a portent and precedent. Such was in fact the deliberate policy of France after war with Prussia and the Empire broke out in April 1792. Wherever then her troops crossed the boundaries of the republic the method chosen was not simply to annex the districts thus overrun, but to encourage the populations as sovereign masters of their own destiny to vote for reunion with France. Thus the war could be plausibly defended as not being one of conquest but of peaceful and willing absorption. Sometimes by a further refinement a republic was created through French influence and the protection of French troops invited. This gave an excuse for occupying important strategic areas in the possession of neutrals. For example, the district of Porentruy, so important for the defence of Belfort from the south, belonged to the Bishop of Bâle. At the instigation of French emissaries it declared itself to be the independent republic of Rauracie, and asked for a French detachment which was promptly sent (Dec. 1792).

The similar reunions of the two sovereign free cities of Mulhouse and Geneva took place after the Peace of Campo Formio with Austria in 1797. France, therefore, though still at war with Great Britain, was at peace with the Continent. Mulhouse had become an enclave within the French territory of upper Alsace after the annexations of Louis XIV. Still nominally a free city of the Empire it

was in close connexion with France and Switzerland to whom it sold the products of its silk factories, and had in fact been united with these countries by a defensive alliance since 1777. Geneva could boast of a long and famous life as a free city loosely linked with the Swiss Confederation. The procedure adopted shows well both the greed and the scruples (such as they were) of the Directory. While determined to possess these two little states, it was not prepared simply to conquer them by force of arms. Both were perfectly well governed, and offered no such excuse for intervention in the cause of order as had just been adduced for overrunning Switzerland. The procedure adopted was that of economic coercion. Mulhouse and Geneva, which had enjoyed free trade with France, were treated as foreign territory, and ringed in with customs barriers. Both were by now completely surrounded, Geneva being enclosed between Savoy and occupied Switzerland; and the time of their coercion was fixed to coincide with the advent of winter to produce the greatest possible hardship. The so-called vote of the city council for union in both cases was a mere farce. It was not even obtained in Geneva without the threat of the French representative, that failure to comply with his request would entail the entry of French soldiers into the city to enforce a measure upon which the Directory had already decided. The treaties of union provided that the citizens should have a year's option to decide whether they wished to become French citizens. Further, in Mulhouse the inhabitants were exempted from conscription and other military burdens until the next general peace; in Geneva the existing religious and commercial privileges of the city were maintained. Few transactions, however, have been carried through in a less peaceful spirit.

Not very dissimilar was a transaction which took place about the same time in eastern Europe. In 1795 Russia, Prussia, and Austria proceeded to extinguish the last remains of the Polish state which their previous rapacity

had spared. Apart from the territory directly under Polish sovereignty, the Grand Duchy of Courland on the Baltic was subject to a loose tie of suzerainty. But since Peter the Great had married his niece to the then reigning Duke its orientation had been rather towards Russia. To possess it had long been an object of Russian ambition, in order to extend a Muscovite coast-line as far as possible along the Baltic, and to control the great harbour and commercial city of Riga. When, therefore, the last invasion of Poland took place, the nobles of Courland were encouraged to get rid of their Duke Peter, whom they despised, and to vote for annexation with Russia. The instrument by which this union was effected stipulated that the duchy should retain its ancient rights and privileges including its Landtag. These were swept away during the centralizing Russification of the nineteenth century.

We may now turn to the Far East and study the persistent manœuvres which after the course of a generation enabled Japan to fulfil its steadfast purpose of absorbing Korea.

This peninsula, whose strategical importance in the high policy of eastern Asia is obvious from the map, had been for centuries under a vague Chinese suzerainty. The Koreans, who were extremely deficient in initiative and in the capacity for organization, endeavoured to keep their country in complete isolation. In the latter half of the nineteenth century this became impossible, and Korea became the cockpit of Chinese, Japanese, and Russian intrigues. Japan set to work with the object of supplanting China as the dominating Power, and succeeded as early as 1876 in signing a treaty with Korea to establish the independence of the latter. The Chinese war of 1894-5 was fought to insist upon the effective recognition of this independence by the Chinese. Soon after the conclusion of the war Japanese troops murdered the Queen of Korea in her palace to get rid of the strongest opponent of Japanese policy. Now, however, Russia appeared as a most formid-

able rival. Having already penetrated Manchuria and acquired the harbour of Vladivostok, she added another naval base in Port Arthur on the Liao-tung Peninsula, squeezed out of China in the last years of the nineteenth century. It was obvious that Korea, which lay between these two harbours, would be the next morsel to be devoured. Russia would then be in possession of a port within less than two hundred miles of the Japanese shores. The traditional hatred of the Koreans for the Japanese furthered such a scheme. Korea would be the principal prize of victory in the event of a Russo-Japanese struggle. When this broke out in February 1904 the Japanese lost no time. In the same month a virtual protectorate over Korea was concluded. This was completed after the war had ended in November 1905 by a treaty which placed the foreign relationships of the country entirely within Japanese hands. A Resident-General was established at the capital to make this protectorate effective. The Emperor of Korea (he had pathetically assumed this resounding title in 1897, as if to ward off coming evils by so inappropriate a gesture) took the extreme step in 1907 of sending three delegates to plead his country's cause at the second Hague Conference. This, as might be expected, had no other result than his own enforced abdication, and a further descent of his country into Japanese subjection. All laws had now to obtain the prior approval of the Resident-General, whose recommendation as to the employment of Japanese officials had to be accepted by the Korean Government. The last final stage was accomplished in 1910, when a treaty was signed providing for the annexation of the country.

Japan thereupon pursued a policy of rigorous centralization and set her energies to work in denationalizing the Koreans. In spite of their proverbial docility they rose in revolt in 1919, and were suppressed with extreme cruelty. In all forms of material prosperity the country has advanced enormously since it came under Japanese rule.

While Japan fought two wars in order to obtain Korea the actual process of internal penetration was peaceful, or, to be more exact, not associated with the bloodshed which was generally found necessary by European Powers in order to extinguish the sovereignty of native potentates in Africa.

A final example of imperialist technique may be illustrated from the relations of the United States with Texas. Here the American plan was to foment rebellion in Mexico with the intention of creating a new state, whose end was implicit in its beginning. Texas was in fact a kind of international skittle, set up with the sole object of being knocked down. Though its creation was the result of violence, its extinction was genuinely pacific, since the promoters of Texas independence themselves intended union with the United States as its result.

Texas, which lies north-east of the present republic of Mexico, had enjoyed a separate administration under the Spanish rule. When the Constituent Assembly of the new Mexican state met in 1824 after having secured its independence, a federal constitution was adopted. The white population of Texas, however, was so small<sup>1</sup> that it was joined with a southern province to constitute jointly a state within the federal union. Meanwhile two Americans named Austin, father and son, had been acquiring large concessions in land and settling thereon immigrants from the United States. This process curiously enough was encouraged by the Mexican Government until 1830. Within Mexico revolution succeeded revolution with the inevitable effect of chronic misgovernment. The inhabitants of Texas were further irritated by the abolition of slavery within Mexican territory in 1829, though they took care that the decree should be for them a mere dead letter. In 1835 the climax of their discontent was reached when Santa Anna, the soldier who had seized the presidency by violence, proclaimed Mexico to be a unitary state. The Texans retaliated by setting themselves up as 'The Lone Star

<sup>1</sup> Probably about 15,000 for more than 200,000 square miles.



Republic', and in spite of the enormous disparity in numbers made good their claim to independence against the ragged cut-throats of the Mexican army. The United States had for years cast an expansionist eye upon this territory, which they had offered to buy from Spain as early as 1819. It might therefore have been expected that the opportunity had now come to annex it, especially as the number of Americans settled there was considerable and their influence great.<sup>1</sup> That this event was delayed for ten years must be ascribed to two causes, one determined by the internal politics of the United States, the other by the general international situation.

The question of the continuance of slavery within the United States was already becoming acute. The North maintained, not without truth, that 'the Texas revolution was a conspiracy to open new slave markets and gain slave territory for cotton'.<sup>2</sup> This conviction was strengthened by the vehemence with which Calhoun, the great orator of the South, pleaded for annexation.

Moreover, Texas had now been recognized as an independent state by various European Powers including Great Britain and France. Neither of these Powers had indeed the fixed intention imputed to them by hostile American critics of supporting Texas as the nucleus of a great new state including Arizona, New Mexico, and California as a counterweight to the United States. But both eyed the United States with jealousy. Great Britain was also, as we have already seen, cumbered with numerous controversies of a bitter character with them, which remained unsettled until 1842. The Ashburton Treaty considerably improved Anglo-American relations, but Aberdeen maintained a steady defence of Texas independence. This was mainly inspired by the idealistic hope that British influence would secure the abolition of slavery there if Texas maintained its separate existence.

<sup>1</sup> Texas actually petitioned for annexation as early as 1837.

<sup>2</sup> Morrison, *History of the United States, 1783-1917* (1927), vol. ii, p. 67.

When, however, Polk became President in 1844 events moved rapidly. As an ardent supporter of the extreme claims of his country to Oregon, he was not careful to avoid offending Great Britain. His expansionist views fitted in with the national temperament. As his election was not due to either a pro-slavery or anti-slavery ticket, he was not obliged to treat Texas as a party question. Finally, if there was further delay, the danger of a Mexican reconquest might become imminent. And so even before he had entered upon office, Congress voted (Feb. 1845) to admit Texas into the Union, and the incorporation was effected at the close of the year.

This incorporation was beyond doubt generally desired. Texas by itself could scarcely have maintained an independent existence. Its natural economic associations were with the United States, which could indeed have strangled it as an independent unit. As has been previously mentioned, after the war provoked with Mexico over the annexation, the United States paid compensation not merely to the parent state, but to Texas herself for the voluntary extinction of her ten-year sovereignty.

The cases of Neuchâtel and Hohenzollern-Sigmaringen and Hohenzollern-Hechingen illustrate the renunciation of sovereignty by an existing member of a federal state in favour of another member of the confederation. In 1814 the Principality of Neuchâtel in northern Switzerland was returned to the King of Prussia, who had ceded it to Napoleon in 1805 in part exchange for Hanover. This little territory was, of course, completely isolated from the rest of his dominions; and was created by the Congress of Vienna a new canton of Switzerland, apparently against its wish. The King of Prussia's power was limited to a purely personal sovereignty. He appointed the Governor but no other officials, and the federal writ ran there exactly as in other cantons, and Neuchâtel was freed from no federal obligations.<sup>1</sup> Any modifications, however, in the existing

<sup>1</sup> The anomalous position of the Prussian Crown was paralleled to a

constitution had to proceed from the King, who naturally supported the oligarchy, which in fact exercised power. It is not surprising that this anomalous situation provoked republican risings in the canton in the great years of revolution 1830 and 1848. After the civil war of the Sonderbund (1846-7) the Swiss constitution was reorganized in such a way as to give greater power to the Federation, and reduce the quasi-independence of the cantons. This gave great offence to the ill-balanced romantic sovereign of Prussia, Frederick William IV, at whose instigation the aristocratic party in Neuchâtel rose in rebellion in 1856. War between Prussia and the Swiss Confederation seemed imminent, but through the good offices of Napoleon III Frederick William was persuaded next year to renounce his sovereignty in favour of Switzerland.

The merging of the two little Hohenzollern principalities in Prussia in 1849 took place in the most peaceful manner possible without any pressure from the great state. The King of Prussia was the head of the Hohenzollern family, and the reversion of the principalities to him in default of male issue was already provided. The lessons in 1848 had shown the danger of disunion inherent in the particularism of the existing German Confederation. Prince Anthony of Sigmaringen, the leading spirit in the surrender, was an ardent admirer of Prussia, and believed in her mission. A moderate and enlightened liberal, he actually became Prime Minister of Prussia seven years later.<sup>1</sup> The terms of the treaty provided for the taking over by Prussia of the sovereignty together with all the existing state burdens, while the two princes were guaranteed an annuity from the Prussian revenues, together with the retention of their existing rank and privileges.

certain extent in the relations of the kings of Great Britain, Denmark, and the Netherlands who were members of the German Confederation for Hanover, Schleswig-Holstein, and Luxembourg respectively. But their sovereignty over these dominions was far less restricted.

<sup>1</sup> He is best known in history as the father of the two princes of whom the elder, Charles, became King of Roumania while the younger, Leopold,

## III

We turn now to cases where the extinction of sovereignty served not merely to aggrandize an existing state, but to create a new state out of the coalescing elements. The classic example of such a process in modern times is the way in which a united Italy was created between 1859 and 1870.

It is impossible within the limit of this work to describe how the sentiment, which made this achievement possible, grew up in the generation after 1815. But it is essential to grasp the following points:

1. A united Italy was possible only through war. Austria, by the Treaty of Vienna, had been given Lombardy and Venetia and thus completely controlled northern Italy. Moreover, the remaining Italian states (with the partial exception of Piedmont) were controlled by Austria, who intervened periodically to prevent or crush revolution. As Austria would not voluntarily renounce this dominant position, she required to be driven out.

2. Any change in the *status quo* established in 1815 proved to be an international question with a threefold aspect. First, the signatory Powers to the Treaty of Vienna (apart from Austria) must agree not actively to oppose any such alteration. Secondly, the independence of the Papacy and the integrity of its temporal possessions deeply exercised all Catholic opinion throughout the world. Thirdly, after Piedmont had accepted French aid in the Austrian war of 1859, the consent of the predominant military partner in that alliance had to be secured before the fruits of the victory could be gathered for Italians.

3. If then it is allowed that both war and diplomacy were necessary preliminaries, it does not follow that the results which followed were not essentially peaceful. The series of almost unanimous plebiscites by which the kingdom

provoked the Franco-Prussian War by his candidature for the Crown of Spain in 1870.

was created suggests that the outcome was the free expression of a people's will. For it is clear that the defeat of Austria with French aid did not make a unitary solution of the Italian problem logically necessary. On the contrary, but for the overmastering popular demand Italy might have taken the form of a federation presided over by the Pope, and composed of the existing states together with a Piedmont enlarged by the acquisition of Lombardy.

4. A federal Italy had ceased to attract any considerable party of Italian patriots after the recantation of Liberalism by Pius IX in 1848 had made it clear that no Pope could be expected to act as the head of a national state. Moreover, the dynasties which ruled over Naples, Tuscany, and the small central states were both illiberal and foreign. If, then, their subjects were determined to get rid of them, whenever opportunity offered, they would have greater guarantee against Austrian interference if they took this step by forming part of a great state, than by perpetuating under other rulers their particularist weakness. The latter solution was that strongly favoured by Napoleon in the interests of France.

5. In order to create a united Italy it was necessary to find a nucleus round which it could form. This was found in Piedmont which, except for the Papacy, alone possessed rulers of Italian stock, and after 1848 showed the rest of Italy a unique example both in sacrifices for the common cause and in the liberal efficiency of its government. In addition the greatest Italian statesman of the nineteenth century, Cavour, was both the Piedmontese Prime Minister and a practised diplomat, who had laid both Great Britain and France under an obligation by procuring the participation of his country in the Crimean War, and had gained an international reputation.

6. Its geography, history, and the statistics of population made it practically impossible for an Italy which united round Piedmont as a rallying centre, to be absorbed in the process. The fact, universally recognized, that Rome

must be the capital of the new state, would rob Turin of much of its importance, and prevent any humiliating suspicion that the new kingdom would be merely an old Piedmont writ large. On the other hand, it was an enormous asset for Italy to take over ready-made a king of the ancient house of Savoy, Victor Emmanuel, *Il re gualant' uomo*, who was known never to break his word, and who had preserved unshaken dignity against Austrian threats and blandishments on succeeding to the throne in the hour of defeat in 1849.

In order to understand the stages by which Italy was united it is necessary to establish the exact position after the preliminaries of Villafranca, which terminated the war of 1859.

Lombardy had been conquered by the Franco-Italian arms. Lombardy<sup>1</sup> was to be ceded by Austria to Piedmont. So far the stipulation of the treaty agreed with accomplished facts. In other respects the discrepancy was glaring. Tuscany,<sup>2</sup> Parma, and Modena had all, after bloodless revolutions, driven out their ruling princes. They were administered by provisional governments and their desire for union with Piedmont was notorious though not formally or legally expressed. The Romagna, the north-eastern province of the papal state, had also after fighting freed itself from papal authority with the same expressed intention. Special commissioners from Piedmont had been sent into these areas to organize a national resistance to Austria.

The terms of Villafranca provided for the restoration of all these princes, for the creation of an Italian federation of which the Pope would be the head and Austria a member in virtue of her province of Venetia. Napoleon, however, had given an assurance to Victor Emmanuel that the exiled

<sup>1</sup> Contrary to Napoleon's desire, Francis Joseph insisted that this cession should be made without a plebiscite.

<sup>2</sup> The revolution in Tuscany began three days before the outbreak of war, though the Austrian ultimatum to Piedmont had already made war certain.

princes should not be restored by force. As he was in a position to prevent Francis Joseph from doing this, the article enjoining their return was a mere dead letter. Did this involve the abandonment of the proposed Italian federation? It was obviously no logical bar. The states in question could elect new rulers or constitute themselves into republics, and join it. In practice, however, the impossibility was manifest. Every one knew that the central states could be maintained in their particularist elements only by force. Napoleon could not use such force. His traditions, his origin, his speeches and writings, even his general imperial policy, made it quite impossible for him to sin so violently against the idea of nationality. Austria could not be allowed to use such force. It would have been the height of absurdity to make war to drive her out of the peninsula, and then make a peace which would give her a larger right of intervention there than she had exercised for forty years.

On the night on which he heard of Villafranca, Ricasoli, the dictator of Tuscany, wrote: 'The formation of a great Kingdom of Italy under the constitutional sceptre of Victor Emmanuel is demanded by good sense, morality and civilization, by the equilibrium of Europe, by reason, humanity and Christianity.' In much the same spirit Cavour said: 'Before Villafranca Italian unity was a possibility, now it is a necessity.'

The Emperor Napoleon by making preliminaries of peace without consulting his ally, had freed him from the obligations which bound them. Victor Emmanuel emphasized this point when he signed the treaty 'so far as it concerns me'. Knowing that Napoleon could not coerce the Italian states into accepting rulers or a régime which they were determined to reject, he set to work against Napoleon's wishes to encourage the peaceful union of central Italy. If this could be accomplished by the manifest inspiration of the spirit of nationality, it would be impossible for Napoleon to veto it. This achieved and the

result styled 'The Kingdom of Italy', then a complete union was inevitable, whether brought about by peace or by war. Thus the union of the centre, which unlike that of Naples and Rome was genuinely pacific, was the core of the whole problem. 'If annexation should cross the Appenines', said Napoleon with truth, 'unity would be accomplished, and I will not have unity. I will have independence only.'

Now the only means by which Napoleon could have enforced this view, apart from the impossible alternative of war, was an agreed policy of intervention in concert with Great Britain. But the new liberal ministry with Palmerston as Premier and Lord John Russell as Foreign Secretary was not only firm against intervention, but positively and ardently in favour of the Italian cause. 'The people of the Duchies have as good a right to change their rulers as the people of England, France, Belgium and Sweden; and the annexation of the Duchies to Piedmont would be an unmixed good for Italy, for France, and for Europe. . . . If the Italians are left to themselves, all will go well.'<sup>1</sup>

Napoleon therefore had the alternative either of facing British opposition, which he intensely disliked, or of changing his own policy, which he was loath to do. That he finally decided towards the end of the year on the latter choice was mainly due to the strong and subtle policy pursued in Tuscany by its dictator Ricasoli. While Parma, Modena, and the Romagna had chosen the Piedmontese commissioners as dictators and simply waited for a sign from Piedmont, Tuscany (or rather Ricasoli) took her own line. It was singularly fortunate for the Italian cause that Tuscany, the key to the centre, was in the charge of Ricasoli, since Cavour had thrown up office in a rage after Villafranca, and Piedmont possessed no other statesman.

Ricasoli saw clearly the essential points of the policy to be pursued. First the initiative for union must not come

<sup>1</sup> Palmerston to Cowley (British Ambassador at Paris), August 22, 1859.



from Piedmont; Victor Emmanuel was bound by his signature at Villafranca and a movement by him might be interpreted as due to a grasping ambition. The centre must act, and act so as to display the popular will in a formal constitutional way. There must be no violence. The revolutionaries, Mazzini and Garibaldi, must be prevented at all costs from trying to stir up revolt in the Papal States. Further, the four states Tuscany, Parma, Modena, and Romagna might and should act in concert, but they were on no account to unite as one central state. To do so would give Napoleon the excuse for asserting that such a union was an end and not a means. Europe might be induced to provide them with a prince, and so perpetuate separatism.

It took from July to November to transform the preliminaries of Villafranca into a definitive treaty of peace. Ricasoli's object was so to use this period as to ensure that the terms of the treaty when signed would be a mere anachronism.

His first task was to obtain a public declaration of the national will. A National Assembly elected by indirect suffrage on a somewhat restricted franchise voted unanimously (Aug. 20) that 'Tuscany should form part of a strong Italian Kingdom under the constitutional sceptre of King Victor Emmanuel'. Similar resolutions from similarly elected bodies were passed by the three smaller states. The next step was to gain the acceptance of Victor Emmanuel. The King obviously could not refuse, but at the same time he was not in a position openly to flout Napoleon by an unqualified affirmative. He therefore replied that the rights conferred on him by this vote laid on him the duty to maintain the will of Tuscany before Europe. The Powers he hoped would recognize the justice of their cause, as in the precedents of Greece, Belgium, and the Principalities. Ricasoli at once asserted that by Victor Emmanuel's reply union had been achieved and acted on this assumption. His government declared that it acted 'in the name of

Victor Emmanuel, the elected King', and proceeded to pass a number of decrees of political, economic, and financial assimilation. Farther than that he could not go, as Napoleon was still able to veto his project of the Prince of Carignano as a Piedmontese Regent for Tuscany.

With the signature of the Peace of Zürich (Nov. 10) events took a swiftly favourable turn for unity. That instrument differed from the preliminaries in not stipulating for the return of the exiled princes but in reserving their rights for a European congress which was to settle the future of Italy. The congress had been Napoleon's idea—in fact it remained his idea whenever he was in trouble—but he soon came to see that on this occasion it was more likely to raise difficulties and to display antagonisms than to provide a solution. Great Britain insisted as a preliminary to her entry that the central princes should not be restored; Austria that the Romagna must be returned to the Pope. It must be remembered also that Napoleon had got nothing so far out of a successful war, not even the gratitude of the Italians. If he allowed the creation of the Italian kingdom he could demand Savoy and Nice, as the visible pledge of victory and guarantee of future security. If he had already aligned himself with Britain,<sup>1</sup> Palmerston might grumble but could not seriously contest such an acquisition of territory, especially if the transfer were confirmed by an overwhelming popular vote.

Consequently Napoleon at once took steps to make the congress impossible by inspiring the publication of La Guéronnière's famous pamphlet *Le Pape et le Congrès*. Whilst declaring that the Pope must remain a temporal sovereign the writer argued that he needed no more territory to preserve his independence than Rome 'and the garden round the house'. It was clear that Napoleon was ready to jettison almost all that remained of the Papal

<sup>1</sup> In January 1860 he took the further precaution of signing the so-called 'free trade treaty' with Great Britain, which was negotiated by Cobden, and created a very favourable impression among the working class of both countries.

States. Naturally neither the Pope nor Austria would voluntarily enter a congress at which such enormities might be discussed. The death of the congress was formally announced on January 3rd, 1860. Immediately afterwards Napoleon openly burnt his diplomatic boats by dismissing his anti-Italian Foreign Secretary Walewski and replacing him by Thouvenel, a partisan of the British alliance.

This left the way open for Cavour's return (Jan. 1860). Even his enemies admitted that he was the only man fit to carry through on behalf of Piedmont the great transformation now impending for Italy. Another three months were to conclude the business. They illustrate the shifty and contorted workings of Napoleon's mind. As usual he hated to admit that he had committed himself irretrievably and tried to go back on his decisions. But he was in fact tied down by his acceptance of John Russell's proposal (Jan. 15) that Victor Emmanuel should not send troops into central Italy, 'until its several states and provinces had, by a new vote of their assemblies, after a new election, solemnly declared their wishes as to their future destiny'. It was agreed at Napoleon's instance to substitute the plebiscite for the proposed method of popular consultation. An unexpected difficulty was encountered in Ricasoli's resistance. He stubbornly and pedantically maintained that Tuscany had already expressed her will, and that he would not allow discredit to be cast upon the earlier vote by permitting a second. It required all Cavour's skilful insistence to bring him reluctantly round.

As the result of such a vote could not be doubtful, it was necessary, as we have seen in an earlier chapter, for Napoleon to make certain of Savoy and Nice before the will of central Italy was declared. The secret treaty of March 12th preceded the result of the Italian plebiscites by three days. The voting was by unrestricted manhood suffrage. The alternatives were two, for union with Piedmont, and for a separate kingdom. The return of the old dynasties was excluded, because, particularly in Tuscany,

it was feared that clerical influence might win an imposing body of peasants to vote in their favour. In Tuscany about 75 per cent. of the qualified voted, the result being 386,445 for union and 14,925 for a separate kingdom. In Emilia<sup>1</sup> the proportion was higher, being about 83 per cent. and the approach to unanimity perhaps suspicious, for 426,006 voted for union, and no more than 756 for a separate kingdom.<sup>2</sup> Two things remained for completion. The deputies had to take their place with those from Piedmont in the first assembly of the new Italian kingdom at Turin on April 2nd. They had also to ratify the cession of Savoy and Nice, which had already been announced by a public treaty.

The union of the Centre differs in several important ways from the earlier and later stages of Italian consolidation. Lombardy and later on Venetia were the direct results of a successful military alliance, in which the foreigner was the predominant partner. The acquisitions of 1860 were certainly the indirect results of the campaign of the previous year. But they were results undesigned by and unwelcome to the principal belligerent. On the other hand, by obtaining compensation Napoleon had, as Cavour aptly reminded him, become an 'accomplice'. Further, the initiative for union came from the populations concerned. It was brought about without internal bloodshed, without armed intervention by Piedmont, or her French ally, or any of the Great Powers. It has, therefore, a spontaneity and an orderly progress towards fruition which is absent from the events of the next decade.

It is not indeed necessary to consider them in detail. While it would be foolish to deny that the majority of Neapolitans and papal subjects were glad to be freed from their yoke of misgovernment, it is doubtful whether a majority, particularly of the former, desired to form part of a unitary kingdom under a Piedmontese dynasty. Even

<sup>1</sup> I.e. Parma, Modena, and Romagna as a combined unit.

<sup>2</sup> For analysis of notes see Chapter V.

if they did their desire had to be stimulated and sustained by different methods of violence. Garibaldi's expedition was from the standpoint of international law an act of brigandage comparable to the Jameson Raid. It led to civil war, to unprovoked invasion of friendly states by Piedmontese forces; and as a counter to the French occupation of Rome, and the bloody repulse of the Garibaldian attack at Mentana. The capture of Rome itself was made possible only by the Franco-Prussian war, and was effected by a breach in the Porta Pia forced by Italian troops.

It seems, therefore, a misuse of language to describe this series of events, which were carried through in the face of protests from all the Great Powers except Great Britain, as illustrative of peaceful change. It is not even true as in the case of Belgium that the result was determined by the Great Powers in order to prevent the outbreak of a general war. There was no such danger. It is, however, doubtful whether Victor Emmanuel would have taken so bold a line without the express encouragement given him by Lord John Russell's dispatch. It is certain that British warships could have stopped Garibaldi from making Sicily, while their presence at Marsala probably prevented the Neapolitan cruisers from destroying the expedition in the act of debarkation.

No doubt the actual transfer of sovereignty was in each case effected by plebiscite, and in each case the approach to unanimity rivalled if it did not surpass that attained in Tuscany and Emilia. They will therefore be examined in the appropriate chapter.

With one exception these votes entirely swept away the sovereignty of the princes who had formerly ruled over these territories. The exception was, of course, the Pope. In so far as he had been deprived of his temporal possessions his position was exactly the same as that of the King of Naples. Both regarded their spoliation as an act of brigandage and refused to recognize its validity. But while the King of Naples joined the ranks of other

European pretenders the Pope remained a sovereign, though without any temporal possessions over which to exercise a political sovereignty. The Pope's spiritual sovereignty, according to the belief of Catholics, did not in any way depend upon the actions of the Italian Government. Catholic states would doubtless have insisted upon diplomatic representation at the Holy See, whether Italy was disposed to allow it or not. The law of guarantees, which the Vatican refused to recognize, therefore merely provided the Italian state with a *modus vivendi*, which it considered to be just for dealing with the problem. It gave the Pope the use but not the ownership of the Vatican and Lateran palaces together with an annual donation of 3,225,000 lire. His palaces enjoyed immunity from the jurisdiction of the state, together with the envoys accredited to the See. He had, moreover, his own postal and telegraphic system. This remained an entirely unilateral arrangement until 1929. The Pope refused to recognize the kingdom of Italy and confined himself to the Vatican, a protesting but voluntary prisoner.

In that year Mussolini successfully arranged a treaty which ensured to the Papacy its demand for 'a minimum necessary for visible temporal power'. It was assured 'the principle and exercise of effective and full power of sovereign jurisdiction over a determined territory to be known as the Vatican City'. This area, which included the Papal palaces and a small strip around the Vatican, was given to the Papacy in full sovereignty instead of merely in usufruct. In return the Holy See recognized 'the Kingdom of Italy under the dynasty of Savoy with Rome as its capital', and accredited an envoy to the Quirinal.

In addition the Pope received a sum in cash of 750 million lire as compensation for the territories lost between 1860 and 1870 together with bonds for another thousand million carrying interest at the rate of 5 per cent.

A concordat was signed at the same time as an integral part of the treaty. By it the Vatican gained the assurance

that religious teaching would form part of the curriculum of all elementary and secondary schools throughout Italy, while marriage by a priest was to have the same validity as the civil ceremony. It conceded for its part that the Bishops should swear an oath of fealty to the state.

Although the creation of the Yugoslav kingdom was directly due to the collapse of Austria-Hungary under defeat in October 1918, the process of its formation exhibits in some respects the elements of peaceful spontaneity.

Before the War the movement for the unity of the Southern Slavs had reached a stage which may be loosely compared with the Italian movement before 1848. Both had been conceived by liberal intellectuals and fomented by revolutionaries, but neither had as yet been tested by war, or been wholeheartedly adopted as a creed by the mass of the population. Serbia represented a greater and more aggressive Piedmont, whose prestige had been vastly enhanced by her triumphant emergence from the three Balkan wars.

The first two years of the Great War marked an eclipse of Yugoslav ideals. Serbia had been overrun. The dead hand of oppression brooded over the Dual Monarchy. Croats and Slovenes had been confirmed in at least a military loyalty by their hatred and mistrust of Italy. This was the darkest hour. In 1917 hopes and activities revived. The entry of America into the War and the Russian revolution stimulated the demand for self determination; while under the milder rule of Karl political agitation was again permitted. In July 1917 the Pact of Corfu was signed by the Serbian Premier Pasich, and the President of the Yugoslav Committee Dr. Trumbich, as representing the subjects of the Dual Monarchy. It was agreed to set up 'a democratic and parliamentary monarchy' under the existing Serbian dynasty to include all lands inhabited by Serbian Slavs, including Montenegro. The next move was to secure recognition of this aim by the Entente. While obtaining expressions of sympathy and the recognition of

the National Council as a *de facto* belligerent body, the leaders got no unqualified satisfaction except from the United States, whose President declared in June 1918 that 'all branches of the Slav race should be completely freed from German and Austrian rule'. Even this was, of course, merely a statement that the Slavs should be free, not that they should be united under one sceptre.

The overthrow of Bulgaria in September brought a headlong and dramatic climax. On October 16th the Emperor Karl in a last desperate effort to avert the inevitable crash proclaimed Austria to be a federal state. This was the signal for the disintegration of the nationalities, which was completed by the military collapse in Italy at the close of the month. On October 29th the Croatian Parliament at Zagreb declared the independence and union of Croatia and all the Serbian and Slovene lands hitherto under Habsburg rule. The transfer of power to this new *de facto* state was carried out peacefully, and its first recognition singularly enough came from the distracted Karl, who handed over to it the Austrian fleet (Oct. 31). When the armistice came its future was still uncertain. A desire for union with Serbia was by no means unanimous. The Serbians were culturally a much more primitive people, and suspicion was felt of their overmastering ambitions. The latter was indeed justified, for the dominant party in Serbia, after the liberation of the country in October, were aiming rather at aggrandizing their own nation than at a free and equal union, and were occupying many strategic points within Habsburg territory. If it had not been for the open hostility shown by Italy to the realization of the Yugoslav ideal under any form, it is probable that the creation of the new kingdom would have proved far more difficult. As it was, fear proved its speedy cement, for the refusal of the Entente to recognize the new state made any delay highly dangerous. Accordingly the official organ of the Yugoslav National Council approached Alexander the Prince Regent of Serbia, with an official offer to take over immediately the



Regency of all the Yugoslavs, which he accepted on December 1st. A fortnight later the National Council sat together with the Skupshtina, the Serbian legislature, and acting as a national assembly solemnly created the Kingdom of the Serbs, Croats, and Slovenes, the official title of the new Yugoslav State.<sup>1</sup> Thus, as in the case of Piedmont, Serbia was merged in the new union, while her Kara-georgevich dynasty succeeded to its throne.

The methods by which Montenegro was induced to make a similar declaration were highly suspicious. King Nicholas, an exile in France since 1916, when a separate peace had been made with Austria, was under a cloud. While taking his own departure he had craftily let his second son Mirko come to an arrangement with the Austrians. The weight of Nicholas's authority, such as it was, was cast against fusion in Yugoslavia, though he professed with doubtful sincerity to favour a federal union. There is no doubt that a large section of Montenegro, whose attachment to their independence had always been intense and exclusive, shared this view. In November 1918 the rival party was in the ascendant, and was powerfully supported by detachments of the Serbian army. Consequently the so-called National Assembly which met at Podgoritzza contained only representatives of the party of fusion. There is evidence that opponents were intimidated and subjected to violence. This body proceeded to depose Nicholas and to merge Montenegro in Yugoslavia (Nov. 26) and its resolution was formally accepted three weeks later. The Allies refused to recognize this dubious manœuvre for two years, though they took no steps to help Nicholas, beyond the continuance of a small dole. Evidence from British eye-witnesses suggests that the Serbs spent this period in massacring the most stubborn adherents of Montenegrin independence. The matter was, however, finally settled by another vote taken

<sup>1</sup> The National Council at Zagreb was responsible for this title which was adopted immediately after independence had been gained from Austrian rule.

at the end of 1920 for the election of deputies under the supervision of an Allied Commissioner of Plebiscites. The ten deputies voted unanimously for the inclusion of Montenegro in the Yugoslav state. This vote was part of that taken throughout the whole kingdom in November 1920 to create a constituent assembly. Owing to the confusion of the last two years the administration had been carried on by a provisional parliament, in which a large proportion of the members from former Austria-Hungarian territory possessed no regular popular mandate of any description.

It will be noticed that this section of our collection of peaceful changes contains more doubtful specimens than any other. This is natural; for history teaches that it is exceedingly hard to extinguish any sovereignty, however paltry, without some admixture of violence.

## CHAPTER V

# POPULAR CONSULTATIONS AND PLEBISCITES<sup>1</sup>

### I

EACH chapter so far has been devoted to the accomplishment of a different kind of peaceful change; and we have often noticed that the same kind of change was carried through by very different methods. In this chapter a single condition, often imposed as the necessary preliminary to change, is separately examined. This is essential for two reasons. First, the theory and practice of the plebiscite is of great importance in the sphere both of political philosophy and of international law. Secondly, the aid of the plebiscite has been invoked to facilitate or justify different kinds of change. As we have seen, it has been used for cession, for creating a new sovereign state, for extinguishing an old one, or as in the case of the Principalities for a change of status without a change of sovereignty. It has not merely formed a condition in the free negotiation between individual states, but since the War has been extensively used as a compulsory method of international settlement. Nor can it be doubted that the supervision of the voting by Powers other than those directly interested in the result has done much towards perfecting the technique and ensuring a more exact manifestation of the popular will. With few exceptions, all the popular consultations of the last hundred and fifty years have taken place by means of a direct vote. This is natural, for the question at issue is a broad and simple one, of vital import to each individual voter. It can be argued that it is

<sup>1</sup> Throughout this chapter I am deeply indebted to Miss S. Wambaugh's learned and admirably arranged monographs on *Plebiscites* (1918) and *Plebiscites since the World War* (1933), published by the Carnegie Endowment for International Peace.

either superfluous or misleading to express the popular will in such cases through elected representation. If those elected are simply delegates, they are not required. If they are given discretionary powers they may use them to thwart or distort the intentions of their electors. The only instances of such indirect voting seem to be the so-called consultations of Belgium and the Rhineland as to union with the French Republic in 1793,<sup>1</sup> which historians agree in condemning as deliberately fraudulent; the elections to the *ad hoc* Divans in the Principalities in 1857, when the question at issue was the complicated one of a general reorganization; and the vote of the assembly of the Ionian Islands for union with Greece, which is explained by the dislike which British Governments have always shown in principle for the plebiscite.<sup>2</sup> The votes of the Croatian, Serbian, and Montenegrin assemblies (Oct.–Dec. 1918) were due to the utter confusions of the time and the extreme need for haste. For these assemblies had not for the most part been elected for that purpose at all; in fact the majority of the members owed such representative character as they possessed to votes given before the outbreak of War, when Yugoslav unity had no practical significance.

We can therefore confine our examination to the direct or plebiscitary vote. It is not necessary to speculate upon its origin in the ancient city state; for its appearance in modern Europe was the direct result of the revolutionary reorganization of France by the National Assembly (1789–90), and it bore the mark of a new discovery in applied political theory. The declaration of American independence had laid it down that a people had the right to live

<sup>1</sup> The voting by communes in Savoy in 1792 resulted in the election of one deputy for each commune. Such an election, however, appears to have been only to give a formal ratification of the popular vote, for it was laid down that the people could 'exercise their sovereignty only in primary assemblies'.

<sup>2</sup> This appears to be due to a fear that acceptance of a direct popular vote for such questions as change of sovereignty would lead to a demand for the referendum in internal matters of policy; which, if granted, would weaken representative government.

under that kind of government which they desired. The Americans proceeded to enforce that right by war. The French Revolutionaries, fired by that example, had enforced the same right against the King and the nobles, partly, it is true, by revolutionary violence, but partly by the peaceful method of embodying the popular will in a series of laws. If, they argued, a people has the sovereign right of self-determination this does not merely involve a right of rebellion. It logically implies also the right of expressing its will by a popular vote. What is right if determined by the use of weapons cannot be wrong if determined by the ballot-box. If rulers recognize the argument of force, they ought *a fortiori* to recognize the peaceable argument of the vote. The theory of the plebiscite is thus essentially that of the sovereignty of the people. But it must be carefully noticed that it is not necessarily the theory of a sovereign people organized as a state or expressing their views as to the proper organization of the state. It may of course be so. The people of Tuscany in 1859 drove out their Grand Duke and organized themselves as a sovereign state on a popular basis. The plebiscite of the next year was held to decide whether that sovereign state should continue in existence, or whether it should be extinguished and merged in the Kingdom of Italy. The plebiscite, however, deals, or may deal, with smaller units than the state itself. When Napoleon III said that it implied *la volonté de chacun* he laid his finger on the danger to the state which many critics consider to be inherent in the theory. If any compact minority within the state is entitled to vote for a change of sovereignty, does not this imply a right of voluntary secession? To allow such a right is obviously most dangerous to the integrity of any state, particularly to one organized on a federal basis. Each individual unit of a federation has already a kind of common purpose recognized by the attribution to it of certain marks of sovereignty. A population so organized in a compact territory could break its existing bonds more easily and with less fear of

the future than in a unitary state if such a right of particularist decision was allowed.<sup>1</sup> It is perhaps for this reason that the United States has never permitted a plebiscite as an antecedent condition of any transfer of territory, with the solitary exception of the Danish Virgin Islands in 1868.

Such critics would urge that if the question arises of the cession or independence of a part of the state, a plebiscite if held should be a consultation of the whole population and not merely of that portion whose fate is directly concerned. The interests of the latter on this view would be properly safeguarded by the mention, in any treaty of cession, of permission to opt within a reasonable period (generally two years) between the old and the new nationality. Such provision was in fact normal though not invariable in most treaties of cession in the eighteenth century. Human baggage, however, as Adam Smith remarked, is so difficult to transport that only a small fraction of those who desired to avail themselves of this privilege could actually do so.

In practice, until 1919, whenever a change of sovereignty affecting a portion of any state has been effected by means of a plebiscite the initiative has not come from the portion but from the whole.<sup>2</sup> It is just for this reason that the plebiscite has been criticized from another angle as a sham, as a method of 'virtual' or 'disguised' cession. It is certainly true that in some instances, as Savoy and Nice in 1860 or Venetia in 1866, the popular vote only followed a bargain which had already been struck by the states concerned, and could hardly have been repudiated, even if

<sup>1</sup> Article 17 of the new Soviet Constitution contains the entirely novel permission to any of the republics, 'freely to secede from the Union of the U.S.S.R.'.

<sup>2</sup> The only instances to the contrary apart from Norway are Avignon and the Romagna, which had, as we have seen, made themselves into *de facto* independent states before applying for union with France and Piedmont respectively. The Cretan Assembly, it is true, often expressed a desire for union with Greece, but the Powers took notice of it only to prevent that union from being realized.

the voting had proved adverse to the bargain. It is also true that both Piedmont and France took careful precautions in 1860 to insure themselves against any such adverse vote. On the other hand, it is certain that while no single plebiscite before the Great War failed to give the results anticipated, the general result of the voting genuinely reflected the real will of the great majority. This is proved by the fact that there has been no irredentist party in any area transferred by plebiscite before 1919.

So even if it is allowed that the plebiscite has been in most cases a formality, which virtually registers a *fait accompli*, that is not a valid reason against it having been held. It gave the population concerned the assurance that they were not being bartered like slaves, and helped to reconcile the dissentient minority with its new status.

Since the war, however, the plebiscite has been used for a new purpose. This is not merely to register an agreement arrived at between negotiating states, but to impose upon a defeated enemy arrangements the justice or expediency of which it was believed could be discovered only by such means. By the association of the League of Nations with the machinery of the plebiscite, it may be considered to have definitely entered the sphere of international law.<sup>1</sup>

It has given to the proceedings a guarantee of impartiality impossible when the voting was controlled by one of the two interested parties, or even by the population itself which was being consulted. It is noteworthy that whereas all pre-war plebiscites gave the expected answer, the issue of those held since 1919 has been often quite uncertain, and in some instances unpalatable to those who ordered it. It is difficult to suppose that the Allies would have undertaken a plebiscite in Marienwerder and Allenstein if they

<sup>1</sup> In 1864 a proposal for a plebiscite in Schleswig was made by France and supported by Great Britain at the London Conference. It was accepted by Prussia, but rejected by Denmark largely owing to the opposition of Russia and Austria. This seems the only occasion at which the plebiscite was suggested (far less imposed) at any international gathering before 1919.

had suspected how strong the attachment of the vast majority to Germany would prove to be.

Doubtless no plebiscite can achieve an atmosphere of complete impartiality. It will always be held in a moment of excitement, which is calculated to throw a proportion of the more susceptible or ignorant voters off their balance. It may often be influenced by abnormal conditions, which are unlikely to be reflected in the permanent life of a state. In northern Schleswig, for example, it is alleged that many votes were cast for Denmark because of the cheapness and plenty of provisions there as opposed to the famine and disorganization of the currency in Germany. On the other hand, Germany is said to have gained some adherents because conscription had been forbidden in that country by the Treaty of Versailles. The plebiscite, however, is not the only kind of voting which is liable to the reproach of being affected by irrelevant or fugitive considerations.

The economic interests of the voters are of course just as relevant and may be just as important as those derived from political predilections, or racial, linguistic, or religious affinities. It is probable, for instance, that the people of Savoy and Nice, who had the unique experience of being twice consulted as to their union with France, in 1792 and 1860, were most heavily influenced by the natural geographical connexions of their country with France, and by the higher scale of living in that country. Their case is the more interesting in that in 1792 they voted for a revolutionary and in 1860 for a reactionary France, for a republic and for an empire, for a state which had disestablished and persecuted the Church, and for one largely dominated by clericalism. Nor can it be disputed that either vote was genuine; yet in the forty-five years interval of return to Piedmont (1815-60) there was no serious discontent; a particularist party certainly existed, it is true, but not one which could be described as definitely pro-French. Of the two the earlier vote was the more spontaneous, although it was brought about by the direct consequence of war. In



1860, as we have shown, both a private and a public treaty had been already signed authorizing the cession before the plebiscite had been taken. In 1792 the French Republic was at war with Piedmont, and entered Savoy as an enemy to the royal garrison stationed there. This garrison fled without any serious resistance, and the invaders were heartily welcomed by the inhabitants. The Convention then showed a spirit of liberality and self-restraint seldom found in conquerors, whether kings or revolutionary peoples. It permitted the Savoyards the same rights of self-determination which had enabled France herself to become a republic. And, what is more, it took careful precautions against allowing that right to be merely a dictated farce. This may have been partly because it had no doubt as to the result. The commissioners sent from Paris wrote: 'When we crossed the frontier we could not believe that we were stepping from one country into another. We found an unknown France, an old simple France.' Anyhow the Convention absolutely repudiated the idea of annexation by right of conquest. The commissioners, as instructed, gave the people of Savoy a sovereign status and informed them that they were free to decide. The question of a return to Piedmont was not excluded as an alternative. The local authorities were not replaced by French, but continued in office. The French troops were not spread about through the country but concentrated in the extreme northern corner. In fact all precautions were taken to ensure a free and genuine vote. This was the high noon of revolutionary scrupulosity. The appetite for expansion soon found far less disinterested methods for its further satisfaction. The doctrine of the natural frontier provided a kind of geographical philosophy to justify conquest. The decree of December 15th, 1792, foreshadowed the rigging of any further popular vote. For it laid down that in any occupied territory all should be deprived of vote and office who had not taken an oath of liberty and equality, whilst French commissioners were to organize

a provisional government to instruct a people not yet ripe for freedom.

So it happened in Belgium. The Convention had induced the inhabitants to rise against their Austrian masters, they had promised them their liberty, but as soon as they discovered that the Belgians had no desire to join a bankrupt and anti-clerical republic they changed their tune. 'Le vœu d'un peuple enfant ou imbécile serait nul parce-qu'il stipulerait contre lui-même' was the convenient doctrine of the commissioners. The only concession to self-determination was the holding piecemeal of primary assemblies controlled by the military, from which opponents were often forcibly ejected. The contemporary manœuvre to secure a popular vote from the Rhineland was, if possible, even more disingenuous, and less convincing. Many of the communes refused to vote at all: even in great cities like Mainz and Speier less than 350 pro-French electors could be induced to appear. To match any such deliberate attempt to falsify the popular will we have to turn to the arrangements for the plebiscite in Tacna and Arica in 1925, where the methods of intimidation employed by Chile were so wholesale that it was decided by the American commissioner and his Peruvian colleague to abandon the vote. A very discreditable method of stifling a genuine expression of opinion was used in the Treaty of Versailles, after the small German districts of Eupen and Malmedy had been awarded to Belgium. The inhabitants of the ceded districts were allowed to express their preference for German sovereignty by writing their names in registers kept by the Belgian authorities. It is not surprising that at the expiration of the prescribed period of six months only an infinitesimal number had been bold enough to avail themselves of this invidious privilege.

It has been noticed that the plebiscite was a doctrine of French origin, and that it was first put in practice under French revolutionary inspiration. It will be also found that the periods of plebiscitary activity until 1914 coin-

cide either with French ascendancy or with the ferment caused by French revolutionary ideas.

These periods are three in number. The first which we have been describing ended with the votes given by the city states of Mulhouse and Geneva in 1798. The second is that of the great revolutionary upheaval of 1848-9, when none of the changes effected by popular vote succeeded in attaining any degree of permanence. The third coincided with the ascendancy of Napoleon III, beginning with the Principalities and ending with the Roman vote of 1870.

Between 1870 and 1914 the plebiscite suffered an eclipse coincident with that of the idea of nationality. The only popular votes then held were in the West Indian Island of St. Bartholomew, a completely insignificant example, and in Norway on the occasion of her secession from Sweden in 1905.

The plebiscites of 1848 in Italy may be considered as an abortive essay in the methods by which unity was actually brought about later on. In both cases a war of Piedmont against Austria aimed at liberating the north by arms, and uniting the centre by force of example. The difference between 1848 and 1859 was that in the earlier year Italy strove 'to do her own business' without military help from abroad, and that the impulse to war came not through diplomacy, but through the outbreak of the Lombard insurrection at Milan. The plebiscites held in the centre covered the same areas as in 1859 with the exception of Tuscany and the Romagna, and the results were strikingly similar in both years. On the other hand, Lombardy, denied a vote in 1859 by the firm refusal of Francis Joseph on the occasion of its cession, had expressed itself for Piedmont with practical unanimity in 1848. Venice, which voted for Italian unity by the ordinary direct method in 1866 after its preliminary cession to France by Austria, elected a representative assembly in 1848 by universal suffrage. Its members voted for union with Piedmont by 128 votes to 6.

The third period (1859-70) is the most fertile. In it were held the plebiscites in Savoy, Nice, Tuscany, Emilia, Naples, Venetia, and the remainder of the Papal States, concluding with Rome in 1870. Three similar votes were given through representatives, the Divans in Moldavia and Wallachia being elected *ad hoc*, whereas the Assembly of the Ionian Islands, which twice expressed its desire for union with Greece, had been elected as a normal legislative body on the earlier occasion when its vote was intended to force the hand of the newly arrived Commissioner-Extraordinary, Gladstone, in 1859. In 1863, on the contrary, it was expressly called together as a Constituent Assembly and requested by the commissioner to decide whether the people desired the continuance of the British protectorate or union with Greece. Further, the Treaty of Prague at Napoleon's request inserted the provision for a popular consultation of northern Schleswig, which, as has already been explained, Germany and Austria agreed to expunge in 1878. Finally, the first plebiscite ever held outside Europe took place in the West Indian islands of St. Thomas and St. John in 1868. Even this was indirectly due to French inspiration, for the Danish Government insisted upon it in order not to compromise the promised vote in Schleswig, for which Napoleon's mediation had made a paper provision two years previously.

A common characteristic of all these plebiscites without exception is their extraordinarily close approach to unanimity. This is of course suspicious. But it is also significant that a very large proportion of registered voters went to the poll, often between 80 and 95 per cent. This would mean nothing if it were proved that a very restricted franchise had been imposed, or that only those voters were inscribed on the registers whose views were believed to be favourable to the desired result. This is not so; on the contrary in almost every case, where adequate records exist, manhood suffrage is roughly the rule. Given therefore such a wide qualification, and the absence of any large

proportion of abstentions, it is impossible to deny the great value of such a method for a faithful elicitation of public opinion.

Before we proceed to the post-war plebiscites it will be worth while to analyse more closely the conditions of franchise and the precautions taken to ensure impartiality in these earlier examples.

The technique of the plebiscites of the French Revolution was very primitive. In Avignon, Savoy, and Nice the people of each commune assembled together in their church as at a public meeting. The franchise at Avignon, as in France, under the constitution in force in 1791, was restricted to active citizens, that is to say, those who paid annual taxes amounting to two francs. The voting was by physical division, the adherents of France staying in the nave, the Papalists moving to the chancel. A number of communes even declined to assemble, as their inhabitants were busy with the harvest.<sup>1</sup>

The arrangements were organized and supervised by three French commissioners, who had at their disposal some 1,600 National Guards. The question of their impartiality was the subject of a hot debate in the French National Assembly. It seems that soldiers were present in 20 out of 98 communes, and in 11 out of the 19 which definitely voted for the Pope. On the whole, the evidence suggests that the commissioners were more concerned with stopping the atrocities of the civil war, which had been endemic for the past year, than with exerting undue pressure on the voters.

In Savoy the franchise was probably, as in France, at that date open to every male citizen of twenty-one without qualification. The French commissioners sent there took

<sup>1</sup> This was on the occasion of the second and decisive vote of July 1791. An earlier and even more informal one had taken place in April, when these particular communes declared that their opinion had been already given. The results at Avignon were expressed in terms of a majority of communes, not of the total inhabitants of the area. The numbers voting are unknown.

great pains to allow a free vote. It was explained that there were three alternatives before the Savoyards:

1. 'To remain under the yoke of your former prejudices' (i.e. under the sovereignty of Piedmont) 'the French while deploring will respect even such blindness';
2. 'A free government, founded on an equality of rights for all citizens', with a perpetual French alliance;
3. Union with France.

The existing municipal and local authorities were continued in office and French troops were withdrawn to a corner of the province. General Anselme, the conqueror of Nice, had been less liberal, for he had set up his own administrative bodies from carefully selected Niçois, who at once justified their existence by a petition for union. The Convention, however, refused to accept it until a confirmation had been obtained from the primary assemblies.

The votes of Belgium, the Rhineland, Mulhouse, and Geneva were so manifestly the result of French pressure, and in the two earliest cases of French manipulation, that they require no further analysis.

A survey of the Italian plebiscites of 1848-70 shows that the technique of voting was becoming standardized. The arrangements made for Lombardy in 1848 were generally taken as a model for all later popular consultations.

A general manhood suffrage at twenty-one years, without requirement of literacy, but normally with the conditions of six months' residence, was adopted. Persons who had been subject to a judicial sentence were generally excluded. The ballot was nominally secret. It will be noticed that the problem of emigrants and natives residing abroad, which gave so much anxious thought to the organizers of post-war plebiscites, was not considered. This was partly because the problem was of no importance at that date, partly because almost all these votes were held under the pressure of haste. Further, the omission of any qualification of literacy, often, no doubt, absolutely necessary if the number of votes cast was in the least to

represent the total number of adult males,<sup>1</sup> obviously gave great opportunity for intimidation, deceit, and downright trickery.

None the less, the very high proportion of votes cast, the absence of disorder, even where it might have been most expected, as in Sicily and Naples, make it clear that the results as a whole were genuine and not faked. No doubt in some cases the approach to unanimity was helped by the questions put to the voters. It is undeniable that many Tuscan peasants, influenced by their priests, would have preferred to vote for the return of the Lorraine dynasty, had such an alternative been allowed.<sup>2</sup> There is much evidence that if not Savoy as a whole, at least its northern districts Chablais and Faucigny, desired another excluded choice, union with Switzerland.<sup>3</sup> Probably both Sicily and Naples would have shown a far more genuine enthusiasm for a solution already made anachronistic by the fusion of the centre, a Federal Italy within which they would have enjoyed a wide measure of autonomy. Least conclusive of all was the Roman vote (Oct. 1870). It is true that 135,291 voted for union with Italy and only 1,507 against. But the total electorate numbered 267,467; so that the poll was little more than 50 per cent. and shows a very small absolute majority for union. No other Italian plebiscite revealed any comparable proportion of abstentions. This is the more significant, as Pio Nono had formally forbidden any of the faithful to participate. There is, therefore, good ground for believing these abstentions to

<sup>1</sup> In Sicily, for instance, it was reckoned that illiterates numbered nine-tenths of the population and in Naples not much less.

<sup>2</sup> There were actually some 135,000 abstentions, or 25 per cent. of the whole electorate in Tuscany—a far larger proportion than elsewhere. These, it is believed, were mainly supporters of the house of Lorraine.

<sup>3</sup> On March 16th, 1860, a petition was sent by representative inhabitants of northern Savoy to the Great Powers as guarantors of Swiss neutrality, asking for this solution, and stating that they had already collected more than 11,000 signatures. The reason for this was economic; free trade with Switzerland was essential for the welfare of the population. France recognized this and provided for a free zone after annexation.

be in the main a deliberate expression of passive hostility. As the Italian Government has been circumstantially charged with every kind of malpractice, extending so far as wholesale impersonation and fraudulent registration, there is certainly nothing fantastic in the claim made by Papalists that the Roman territory would have preferred to remain under the sovereignty of the Vatican. There is not, however, the slightest reason for doubting the genuineness of the earlier polls held in the remainder of the states of the Church, Romagna, Umbria, and the Marches. All the votes by which Italy was united were, it is true, taken under Piedmontese auspices with the exception of those in Tuscany and Emilia (March 1860). No doubt the Piedmontese were much better organized, more experienced in administration, than the local authorities in the misgoverned and semi-medieval areas under the control of the Pope and the King of Naples. Moreover, to prevent possible interference from Europe, it was highly desirable to get the votes over as soon as possible. *Faites, mais faites vite*, Cavour's secret advice to Garibaldi, is almost equally applicable to the plebiscites. Still, Piedmont showed consistently a jealous spirit of interference, which was to provoke much distrust and even armed rebellion in Naples after the annexation.

In Tuscany the arrangements were entirely in the hands of the native provisional government, which meant Ricasoli: in the various districts of Emilia a Piedmontese dictator was in each case in charge, but the detailed arrangements were left to native officials. In Savoy and Nice the procedure adopted was nominally such as to allow the inhabitants to settle their own destiny without pressure from either their former or their future sovereign. The Piedmontese troops were withdrawn and Piedmontese officials replaced by natives, upon whom lay the duty of organizing the vote. These latter, however, were not elected but appointed by Victor Emmanuel, who took good care that they were of notorious French sympathies.<sup>1</sup>

<sup>1</sup> Proclamation by the new Governor of Nice, April 5th, 1860: 'Let us



His own proclamation to the inhabitants also makes it obvious what he expected the outcome to be. Napoleon sent a commissioner to both provinces in order to watch over French interests, whilst an important commercial and financial commission toured the north to counteract Swiss propaganda by lavish promises.

It appears, however, that the best French agents were the local clergy and schoolmasters. They were influenced by the worldly consideration that their salaries would be increased under the French scale by about 100 per cent. But they had been turned against Victor Emmanuel's government and also against Cavour by the recent Siccardi Laws, instituting civil marriage, which they regarded as sacrilegious. And in so devoutly Catholic a population the pro-French activities of these two classes had an extremely powerful effect.

The more prosaic reasons for the almost unanimous vote for France are well summed up in the address of the first and last deputies elected by these provinces to the Italian Parliament:

'The result of this vote cannot be in question, for the Alps, the language, habits and commercial relations make Savoy French. She will vote therefore for the political realisation of what has been already done by Nature, and with all the less hesitation as it is already certain that the province will not be divided, and that it will find in a free trade zone a safeguard for the commercial interests of such areas as require it.'<sup>1</sup>

One of the very few popular votes against which no allegations of unfairness has ever been made was that

hasten to affirm by our votes the annexation of our country to France. In rendering ourselves the echo of the King's intentions, let us rally round the flag of that great and noble nation which has always aroused our warmest sympathies.'

<sup>1</sup>	<i>Savoy electorate</i>	<i>Affirmative votes</i>	<i>Negative votes</i>
	135,449	130,533	235
	<i>Nice electorate</i>	<i>Affirmative votes</i>	<i>Negative votes</i>
	30,712	25,933	160

It will be noticed that while in Nice the abstentions numbered some 16 per cent., in Savoy they were barely 3½ per cent.

which entailed the separation of Norway from Sweden in 1905. This finale to a long controversy expressed the deliberate and all but unanimous desire of the Norwegian people, who were in a position to carry it out without any interference by Sweden and had no minority upon which a temptation existed to exert undue pressure.<sup>1</sup>

## II

The post-war plebiscites stand out in sharp contrast with, and yet are truly complementary to, the dictated peace. Without them it is impossible to conceive of any settlement which would not have required the use as well as the threat of naked force. It is both undeniable and surprising that, taken as a whole, the conduct of these votes was fair, and their result beneficial in allaying animosities and sowing seeds of permanence. The obstacles in their path were great. They were not freely negotiated but imposed by the victors upon the vanquished, though Germany, the Power principally affected, realized that it was more equitable and less galling to lose a population after the consultation of its voters than without it. The Allies had to face a natural and intense suspicion when they proceeded to make, as neutrals, the arrangements to carry through the measures which they had recently dictated as victors. All these difficulties were enhanced by the economic and financial disorganization of central Europe. Yet the plebiscite emerged with all and more than all the credit which it had lost since 1870 through obsolescence. Broad principles often owe their success in application almost entirely to careful attention to detail, and such attention was not spared.

The key to the evolution of the plebiscite after the War lies in its international character. It is obvious that no

<sup>1</sup> Electorate 435,376; affirmative votes 368,208; negative 184. The vote was taken in a hurry—only seventeen days being allowed for its organization. This was because the arrangement arrived at with Sweden was contingent on the result of a plebiscite which it was therefore thought expedient to hold with the shortest possible delay.

guarantee of impartiality can exist if the arrangements are in the hands of interested parties, whether they be the states whose claim to the sovereignty of an area is being contested, or the population which is called upon to express its will. An international commission is therefore demanded not merely to supervise but to organize and carry through the prescribed procedure. Such a commission, in order to inspire complete confidence, must be completely neutral in complexion and responsible to the League of Nations. This demand is first found in the comments of the German delegates on the Conditions of Peace (May 1919): 'Security can only be obtained by placing the vote as well as the administration of those territories under the control of a neutral authority composed of nationals of the States of Denmark, the Netherlands, Norway, Sweden, Switzerland or Spain.' It was not, however, until the holding of the Saar vote under the auspices of the League in January 1935 that such an ideal was practically realized. The post-war plebiscites were held under arrangements made and controlled by administrators and soldiers of the Allied Powers, being responsible not to the League but to the Allied Supreme Council in Paris. The only partial example to the contrary is the Schleswig vote, where a Norwegian and a Swedish representative were associated with those of the Allied Powers on the commission.<sup>1</sup> The troops required for the area were, however, furnished exclusively by Great Britain, France, and Italy. It is most improbable that the neutral states, even if pressed to do so in 1919, would have undertaken the heavy and thankless responsibility of managing all the plebiscites arranged in the treaties. It is perfectly certain that they would not have provided the troops necessary for police duties. As it would have been very awkward, if not impracticable, for Allied troops to have been commanded by neutral commissioners, there was really no alternative

<sup>1</sup> The attempted plebiscite at Vilna was controlled by a commission responsible to the League of Nations.

to the course actually adopted.<sup>1</sup> Except in the case of Upper Silesia, the orders of the Allied Commissioners and the conduct of the troops were open to no serious reproach of partiality on the side of the enemy states.

To arrange for the scientific organization of the vote itself is not the only service which an international authority can perform. It is also able to determine with greater exactness and precision what area should be subjected to a plebiscite. It is clear that the boundaries of a mixed population often fail to coincide with those of any existing administrative unit; they may be either smaller or greater. The true object of any plebiscite is to include within any given sovereignty as small a dissentient minority as is possible, when due weight has been given to considerations of geography, economics, and transportation. Now it is obviously easier for an impartial authority to study with more detachment such racial, linguistic, religious, and economic statistics as are available for any given problem, especially when a suspicion exists that such statistics have been faked or wrested by the interested states. Most of the plebiscite areas of 1919-20 were in fact exceedingly complicated in their distribution of population. Even if goodwill had existed between the contending parties instead of a bitter hatred, any agreement between them as to the justice of any suggested boundaries would have been so difficult as to approach impossibility. It will be remembered how often in the past states found it necessary to have recourse to an arbitrator to decide upon these boundary disputes even where neither side was vitally, if at all, concerned with the desires of the populations affected. The proper task, therefore, of an international authority is quasi-judicial; to ensure that all those individuals should be able to vote who are entitled to do so by considerations of justice and equity.

<sup>1</sup> The participation of the United States was provided for, and would have added a more detached element, but the American Government failed to carry out its undertaking.

Moreover, a plebiscite thus held tends more and more to become a consultation of the people rather than an expression of popular sovereignty. The voters are given not so much a right of self-determination as of self-expression. The result of the vote gives a general indication of the solution to be adopted, but need not in any way prejudice the settlement of a detailed boundary. The post-war plebiscites were normally held by communes, the results in each being separately recorded in order not to swamp the wishes of these individual units in the general majority of a wider administrative area. Care was also taken formally to preserve a discretion in the adjustment of the boundary after the publication of the vote. The frontier of northern Schleswig was to be fixed 'according to a line based on the results of the voting, and proposed by the International Commission, and taking into account the particular geographic and economic conditions of the localities in question'. In Allenstein and Marienwerder 'regard' was to be paid 'to the wishes of the inhabitants as shown by the vote, and to the geographical and economic conditions of the locality'. In Upper Silesia 'the inhabitants will be called upon to indicate by a vote whether they wish to be attached to Germany or Poland'; and it was left to the commission not only to announce that vote to the Allies but to add 'a recommendation as to the line which ought to be adopted as the frontier of Germany in Upper Silesia'. As it was accurately stated in the subsequent report of the examining commission of the Council of the League of Nations to whom the decision was finally referred: 'Clearly what the authors of the treaty desired was the determination of a frontier, no particular line being either prescribed or excluded in advance.' The care which was taken in the fixing of an equitable frontier can be further seen by the dividing of an area into two zones, when a vote on the second was contingent upon the results obtained in the first. This procedure set a new and very useful precedent. It was laid down for the votes

both in northern Schleswig and the Klagenfurt Basin, but was carried into effect only in the former, as the success of Austria, contrary to expectation at the earlier poll, gave her the remainder of the Klagenfurt territory without the necessity for the consultation of the second zone.

It is clear, therefore, that the modern plebiscite tends towards the ideal of a completely neutral organization by an international body, with power to interpret the vote in a semi-judicial way, having regard to all the circumstances in the disputed area.<sup>1</sup>

It follows to consider what are the measures indispensable to be taken if this quasi-judicial atmosphere is to be secured. As we have seen, the post-war plebiscites, with the exception of that in the Saar Territory, were not held under neutral auspices, except for the Scandinavian element in Schleswig. In Klagenfurt, for some reason not fully explained, the two contending parties, Austria and Yugoslavia, were given membership on the commission and their troops remained within the zones to be consulted. This is the only departure from the principle that the states directly interested should stand aside.

The principal duties of a plebiscite commission are to arrange for (i) the policing of the area, (ii) its administration during the interim period with the greatest possible combination of impartiality and efficiency, (iii) the conditions of the franchise and of the voting itself, (iv) a report containing everything necessary to enable the final authority to give a just decision. The commission therefore exercises to all intents and purposes a temporary sovereignty qualified only by the extent to which its power of organization requires to be supplemented by the co-operation of the local authorities.<sup>2</sup>

<sup>1</sup> Korfanty, the Polish national leader in Upper Silesia, complained that 'the people of that area had been treated as an unimportant adjunct to the coal fields'.

<sup>2</sup> The sovereignty over disputed areas until the vote had been taken and confirmed by the Supreme Council still remained with the state in possession. The renunciations made by Germany and Austria in the

i. *Police*. If the military forces of the possessing state are to be withdrawn it is obvious that some equivalent beyond the local police must be provided to keep order in a population which the prospect of so vital a vote is bound to excite. As (except in Klagenfurt) only Allied troops were available for this duty, a very careful computation was required—order must be secured, otherwise, as in Teschen, it might prove impossible to hold the vote—but no opportunity must be given for the natural charges of intimidation by the provision of a force which could be criticized as excessive. It was hardly less important that the contingents should be provided from all the Allies and as far as possible in equal proportions.

No complaint seems to have been made anywhere as to the importation of an excessive force. Indeed, the Poles complained that the number of soldiers present in East Prussia was insufficient to give protection to their colinguists. As the vote went so decisively against them this was doubtless natural. There were, however, only about 2,500 for an area of more than 5,000 square miles.<sup>1</sup> In Upper Silesia the number, though large on paper, was certainly not excessive to control a mining population of about two millions, most of whom were actuated by feelings of ferocious mutual hatred. But here the composition of the force was heavily open to criticism. The majority was supplied by France, who had been the protagonist for the handing over of Upper Silesia to the Poles without any such formality. The plebiscite had been inserted into the amended text of the treaty by the insistence of Mr. Lloyd George.

The disproportion was really the fault of the British Government, which was reluctant to dispatch an adequate force, and indeed, did not maintain any contingent at all treaties were conditional on the result of the vote. During the interval the sovereignty remained in abeyance, and was exercised by the Allies on behalf of the enemy Power concerned.

<sup>1</sup> The numbers were roughly 3,000 in Schleswig, 2,500 in Allenstein and Marienwerder, 20,000 in Silesia.

during part of the time. By a similar complaisance it allowed France to provide a majority of senior civilian officials. The result was the encouragement given to the wilder Poles to start a civil war, for which they counted on French connivance, if not help. Probably this outbreak caused a number of moderate men to vote for Germany, in the hope of thereby obtaining greater security for the future. If so, the French met with a well-deserved rebuff for allowing passions to be exacerbated by the open display of their partisanship. The province was hardly in a fit condition to take a vote, even if its supervisors had exercised the utmost impartiality.

ii. *Administration.* The ultimate responsibility rested with the commission itself. The choosing of suitable members by each of the states concerned was therefore of the utmost importance for the harmonious relations with the local authorities. Even if it had been possible for Allied officials to supersede those already in existence (which would have required a number vastly in excess of the supply)<sup>1</sup> linguistic difficulties and want of local knowledge would have made it absurd to try to improvise a complete administrative machine. Co-operation was just as necessary as direction and control.

The control was indeed theoretically complete. The Silesian commissioners by the terms of the treaty received 'all powers exercised by the German or the Prussian Government except those of legislation and taxation'; and those accorded in the case of other German plebiscites, though less specific, were equally far-reaching. In Klagenfurt, on the contrary, the control of the area extended only so far as the duty of ensuring that the existing administration was impartially carried out. The general sketch which follows will therefore confine itself to the relations between the commissions and the German Government. The latter undertook to co-operate by sending a delegate

<sup>1</sup> Even in Upper Silesia the total number of officials provided for the commission amounted to only 129, including clerks and typists.



into the area, to act as the intermediary between the commission and the local officials. He was to be responsible, in the name of his government, for the continuance of the railways and all other essential services, and for the services of all officials whom the commission required to remain in office. Such officials were to be responsible only to the commission during its period of authority. They remained as the actual administrators under the supervision of sub-commissions set up for the more important departments. 'Three principles', in the words of Miss Wambaugh, 'governed the commissions. . . . They were to disturb existing conditions as little as possible; to leave as much as possible to the local citizens; and to make the two parties as far as possible guardians of their own interests.' These principles were subject in the interests of an impartial vote to obvious qualifications. The departments of police and justice were the keys to success. The extent to which they could be used for intimidation if left to themselves requires no illustration.

As regards the police, it was generally found necessary to provide a new head and to reorganize the force itself in order to ensure representation of both parties within it. This was apt to reduce efficiency in the interests of impartiality as the newly enrolled members would be lacking in training and, being generally importations from the other side, would be regarded with suspicion and dislike by the existing members of the force.<sup>1</sup> It was probably for this reason that the German police in Upper Silesia remained for seven months without any reorganization, Polish recruits and the effective international control being introduced only at the eleventh hour, without satisfactory results.

The measures taken to ensure the pure administration

<sup>1</sup> This objection did not hold good in Schleswig, where there was an excellent spirit of co-operation between Germans and Danes. This is explained by the mutual respect of the two nations, together with their racial and linguistic similarity. On the other hand, the Germans loathed the Poles as vicarious conquerors, despised them for their inefficiency, and were generally ignorant of their language.

of justice varied as between the different commissions. In Schleswig, the most orderly of the areas, the German courts were continued in existence subject to the commission's right of veto in any political prosecution. The Silesian Commission set up both a new Court of Appeal and a Special Court of its own. Germany successfully challenged the validity of the former on the just ground that the commission had been explicitly restricted from assuming any legislative powers. It also raised the same objection to the latter, and protested throughout the proceedings against its continuance. However, Germany finally recognized that the Special Court, even if technically *ultra vires*, protected many Germans from violence and alone made it possible to hold a vote at all in the face of such violent disturbance. After its conclusion, therefore, the Reich accepted the verdicts given by this court.

iii. *Voting*. The most important preliminary precaution was to prevent the presence of unauthorized persons within the area, both to avoid false registration and impersonation, and to ensure that feeling would not be inflamed by the irresponsible activities of imported agitators. This implied two measures, the closing of the frontiers and the provision of identity or circulation cards for the inhabitants. To forbid propaganda would have been to impose an impossible restriction on excited human nature. The commissions, therefore, contented themselves with its restriction as far as possible to non-provocative display. The day of the poll was normally on a Sunday, and the sale of all alcohol forbidden on the eve and on the day itself.

With regard to the qualification for a vote, a more or less uniform system had been laid down in the treaties themselves; the age of twenty years without distinction of sex, with no discrimination against illiteracy or judicial conviction.<sup>1</sup> There was, however, more difficulty in determining what persons so qualified were to be entitled to

<sup>1</sup> In some instances this applied only to conviction for political

vote, and more variation in the procedure adopted in the different plebiscites.

There could of course be no question as to the inclusion of all resident natives who everywhere formed the majority. Yet when the voting was likely to be close the result might be determined by the other classes whose claims had to be considered; these were non-resident natives, who might have left by voluntary emigration or through expulsion by the authorities, resident non-natives, who would normally be either officials or immigrant business men or labourers, and finally non-resident non-natives. The claim of this last class sounds very weak, but it might happen that foreigners, after a long period of residence, had been expelled on political charges. For example, in Upper Silesia it was alleged that there had been a considerable immigration of Polish miners, who had acquired a permanent domicile in that province, but had been expelled by the German authorities when they found that it was to be the scene of a plebiscite. It is not necessary to examine all these classes in detail. Non-resident natives were everywhere allowed to vote—and their influence seems to have been most important in the second Schleswig zone and in Upper Silesia.<sup>1</sup> It appears that this provision favoured Germany in both these cases. This is not because Germany had the larger number of potential 'outvoters'; on the contrary there had been in the past far greater inducement for the emigration of Danes and Poles than of Germans, who represented the sovereign and repressive power. But Germany had the advantage of a prior consultation of the records, which were open to her rivals only after the arrival of the commission; she had therefore got in touch with many of these voters at an early date and employed her unrivalled powers of organization offences. In Schleswig and the Saar all convicted persons including those actually held in jail at the time were permitted to vote.

<sup>1</sup> The outvoters here are reckoned at 7,695 for Germany, or about 15 per cent., and 1,350 for Denmark, or about 11 per cent. In Upper Silesia the total was about 16 per cent. of the whole electorate.

to mobilize them for the vote.<sup>1</sup> As a result the proportion of outvoters registered and polled by Germany was very much the larger. It is not contended that the numbers were large enough to reverse the verdict anywhere except in some Silesian and Schleswig communes, but the moral effect of trains packed with so welcome a reinforcement is said to have been very considerable.

The claims of resident non-natives could clearly not be ignored. Though it might be expected that the majority would belong to the state possessing sovereignty at the date of the vote, and a considerable proportion consisted of officials and their families, there was a large number of genuine settlers, professional men and tradesmen and workmen. In none of the areas had there been any systematic colonization by the ruling Power. The length of residence which gave the right to vote was variously settled by the commission in accordance with local conditions and recent history.

It will be remarked that these plebiscites provided by far the most imposing and comprehensive demonstration of popular will ever held. In the Italian votes, which represented manhood franchise at the age of twenty-one, the proportion of voters to the total population was from 18 to 23 per cent.<sup>2</sup> In 1919-20 adult suffrage at the age of twenty provided an electorate which approached two-thirds of the total population. In Upper Silesia, for example, the registered electors numbered 1,220,514 out of a total population of 1,942,186. As the proportion of votes cast was exceedingly high, amounting in Upper Silesia to over 97 per cent., in Klagenfurt to nearly 96 per cent. and never falling below 90 per cent., it is impossible to deny that the tests were singularly exhaustive. The criticism of the defeated party had therefore to be confined

<sup>1</sup> Moreover, a very large proportion of the Polish outvoters were in the United States, and few of them fulfilled the sanguine hopes of the Poles by travelling to Europe in order to register their vote.

<sup>2</sup> In all the nineteenth-century plebiscites registration was much less complete than in those held after the Great War.

to the fairness of the vote. But even if all the charges of intimidation, impersonation, and so forth were admitted, in no case was the voting sufficiently close to raise any doubts as to the genuineness of the result obtained. The closest of all was in Upper Silesia, but even here the Germans obtained the substantial preponderance of 59·6 per cent. as against 40·3 per cent.

The results brought home an interesting and important lesson, the insufficiency of all linguistic and cultural statistics as evidence of the political will of the populations concerned. For example, in Allenstein the Allies relied on official German statistics which would certainly not exaggerate the Polish character of the locality. These statistics showed that over 50 per cent. of the population used Polish as a mother tongue, and still more conclusively that about two-thirds of the school children were Polish-speakers. Yet the plebiscite gave Germany the astonishing majority of 97·86 per cent. The differences between language and vote in Upper Silesia, though not so enormous, were very remarkable, and operated in every case against the Poles! In Allenstein the religious question doubtless played a large part, for the great majority of Polish-speakers, being Protestants, feared the intolerance of a Catholic Poland. In every instance Poland suffered from the fear that the newly created state would not be able to stand against the Bolshevik menace, and from the knowledge that wages, standards of life and culture, the spirit of enterprise and organization, all stood far higher in Prussian than in Russian Poland. But it was Russian Poland which formed by far the largest part of the new state and might be expected to impose its standards upon it. It is perhaps even more surprising that the results in Klagenfurt showed that the Yugoslavs polled less than two-thirds of those whom the Austrian census of 1910 had reckoned as Slovenes,<sup>1</sup> while the vote for Austria was double

<sup>1</sup> Language statistics were: German 31·4; Slovenes 68·6. Voters at plebiscite: German 59·04; Yugoslavs 40·96.

that of the German-speaking population. For Austria was in a state of disintegration and collapse far more desperate than that of Germany, and had been deprived of any obvious chance of economic recovery. It is clear, therefore, that even in the day of Slav supremacy the minds of moderate men were convinced both by history and by experience of the superiority of the German over the Slav both as a governor and as a business man. Neither language, sentiment, nor the desire to be on the winning side and to gratify the Entente sufficed to deflect their vote from what they believed to be their solid and permanent interest.

With the exception of Upper Silesia, the number of dissentient voters who were transferred as a consequence of the vote is surprisingly small. It amounts to little more than 80,000,<sup>1</sup> a mere fraction of the millions unwillingly handed over by the bare terms of treaties to aggrandize Italy and Roumania and to create Yugoslavia and Czechoslovakia. In all these cases, therefore, the vote, as might be expected, has proved the precursor of a definite settlement, which is not likely to be set aside, unless another general convulsion breaks out. In Upper Silesia there has been no such acceptance of finality. This is inevitable. The result gave no equitable warrant for the assignment of the whole area *en bloc* to either of the contending states. The commission itself, interpreting the votes in accordance with its divided views as to the respective claims of justice, economics, and political expediency, spoke with a divided and almost contradictory voice. The French President, General le Rond, proposed to give the whole industrial area to Poland, together with five-sixths of the total population. On the other hand, the report by the British and Italian commissioners recommended that the industrial area should be retained almost intact by Germany. The League Council was initiated into its duty of international conciliation with this pecu-

<sup>1</sup> This includes Schleswig, Marienwerder, Allenstein, Klagenfurt, and Sopron. The total number of voters was about 730,000.

liarily thorny dispute. The decision to divide the industrial area was doubtless the only one which would have commanded the assent of the Allied Powers. It would require accurate and detailed knowledge of the local economic problem to estimate how severe the injury caused by this division has proved to be.

'The boundary twists and turns, dividing here a chateau from its stables, there a village from its cemetery; reaching the industrial area, it separates factories from their electric power, miners from their mines. Even shafts of the same mine are in different countries. Foundries of the Polish part are dependent on coke from the German, the industries of the German side on the raw material from the Polish area. The living web of modern industry has been cut apart, yet it lives.'<sup>1</sup>

As far as the population itself is concerned, proportional justice has been done by a division which closely approximates to the result of the vote. Germany received 686,000 voters as against the 707,000 of the plebiscite, Poland 500,000 as against 479,000. A dissatisfied minority of 415,000 has been more or less equally divided between the two states.<sup>2</sup> The compromise has proved as satisfactory as could be expected, and expectation was never high. Silesia has remained one of the many danger spots in Europe, but has been exempt from physical violence on any menacing scale within either the German or the Polish portion. Both sides, as might be expected, complain with more or less regularity as to the treatment of minorities. It is probable, however, that the agitation as a whole is stimulated and kept alive by irredentists outside rather than within the area.

The plebiscite in the Saar Basin (Jan. 1935) is the only other example of the self-determination of a great industrial community. The problem here was quite different

<sup>1</sup> Wambaugh, *Plebiscites Since the World War*, i. 269. A scheme for a transitional economic period of fifteen years devised by the Council of the League mitigated the grosser hardships arising from the division.

<sup>2</sup> 218,000 Germans and 197,000 Poles were allotted to an alien sovereignty.

from that in Upper Silesia. The population was singularly homogeneous, and no question of a possible division ever arose, though the League had been given power to adopt this solution. It presents, however, some features of unique interest. It was held in a territory which had been for the past fifteen years governed by an international commission responsible to the League of Nations, this régime having been specially imposed by the Treaty of Versailles to permit of a calm and reflective vote at the end of the period.<sup>1</sup> It was, moreover, the first occasion on which the continuance of an international régime, which had thus been put on trial, was one of the options set before the voters. Finally, it was the first plebiscite for which the whole arrangements were placed in the hands of the League. It therefore marks a further stage in the evolution of the plebiscite towards the goal of peaceful popular consultation under an international and completely impartial authority. Although the military contingents employed to police the area included detachments from Great Britain and Italy, signatories to the Treaty of Versailles, as well as those of Sweden and Holland,<sup>2</sup> they appear all to have received an equal welcome as genuine representatives of the League. Their arrival was indeed ardently desired by the population to suppress the rising tide of violence and intimidation, which their presence did in fact succeed largely in calming.

In yet another respect the territory was unique, for the ownership of the coal deposits and the mines within it was contingent upon the result of the vote. These had been given to France in full ownership as compensation for the destruction of her own mines in Northern France

<sup>1</sup> France possessed by treaty certain exceptional rights in the territory, e.g. of creating schools for the employees in the mines and giving instruction in the French language. It was also included within the French customs union and one of the five places in the governing commission was allotted to a Frenchman.

<sup>2</sup> The numbers were: British 1,500, Italian, 1,300, Sweden and Holland 250 each.



with the proviso that in the event of a vote in favour of German sovereignty, Germany should be under the obligation of repurchasing them on terms specified by the treaty. The two countries, however, took advantage of the option permitted therein to sign a separate agreement which included the method of repayment in a more general economic and financial convention a month before the vote was held.

The results of the poll were conclusive,<sup>1</sup> and showed that the steadfast attachment of the Saar population to their mother country was not affected by any change of régime within it. That the vote for France would be completely insignificant had been for long a matter of common knowledge. But it had been anticipated by many neutral observers that there would be a large minority vote, perhaps as much as a third, in favour of the *status quo*. This was not merely because the League's administration provided exemption from military service and a guarantee of civil liberty together with cultural and religious freedom. It was believed that the Nazi Government was repugnant to large numbers, and had been made more so by the fierce activities of its agents within the territory, their inquisitorial and intimidatory tactics and their violent threats of reprisals upon all who opposed immediate union with the Reich. As this party had been organizing itself intensively for nearly three years before the vote was held, it had probably succeeded in the forced conversion of many disciples before the Plebiscite Commission endeavoured, with the aid of the troops and a special tribunal, to provide an atmosphere of freedom. It is impossible to form any estimate as to the number of those who through fear voted against their convictions. It is significant that abstention, the common refuge of the timid, was almost non-existent. This, however, may be

<sup>1</sup> For Germany 477,119 (90.35 per cent.), for the *status quo* 46,613 (8.83 per cent.), for France 2,124 (0.4). The total percentage of votes to electorate was 97.9 per cent., or higher than in any plebiscite yet held.

explained by the fact that in face of an organization so elaborate and minute in its investigations as that of the Nazi party, it might be more compromising to abstain than to cast a hostile vote. Abstention would certainly be discovered and would be interpreted as evidence of the worst spirit, whereas there always remained a hope that the ballot might retain its secrecy. The number of refugees who left the territory after the declaration of the poll does not suggest a panic fear of reprisals on any large scale; while the maintenance of the Supreme Plebiscite Tribunal for one year during which any voter could bring before it 'a complaint in respect of pressure, prosecution, reprisals, or discrimination' allowed for a transitional period in which passions would have time to cool. From the angle of general European policy, the result attained was the most desirable, for it settled the last territorial question at issue between France and Germany.

It will be noticed that no attempt has been made to explain why particular areas were selected by the Allies for plebiscites. This is really irrelevant to our inquiry, for the selection was part of their general policy as victors and has nothing to do with peaceful change. It was only the way in which this policy was carried out which can be described as peaceful. The aim of this chapter is simply to analyse the plebiscites themselves, to extract from them the general principles which governed them, and to show in what respects their application was modified by the particular circumstances of each vote.

## CHAPTER VI

### CHANGES OF STATUS

So far all the changes which we have examined, though various and diverse both in their methods and results, have involved a transference of sovereignty. There are, however, many others which, though in this respect less fundamental, may entail international consequences of equal importance.

Such changes can apply to the whole or to a part of a sovereign state, to seas, straits, canals, or inland waterways.

It is not easy to decide what changes of this nature should properly be included within the scope of our inquiry. Perhaps the best criterion is whether such a change by its nature directly affects the relations of a particular state with other states. We can obviously rule out internal modifications of the constitution of a state, however profound and far-reaching, because their effects, whatever they may be on foreign relationships, simply imply a difference in orientation, which any state may equally well adopt without any domestic alteration. If, on the other hand, the position or organization of any state is internationally determined, its alteration, however slight, would technically be an instance of peaceful change as defined above. For example, the repudiation of Turkish suzerainty by Ferdinand of Bulgaria in 1908 and his assumption of the title of Tsar in place of that of Prince were in effect merely the recognition of a *fait accompli*. But as his position was determined by an international instrument, the Treaty of Berlin, the change required for its validity the consent of the signatories. Similarly, the kingdom of Greece was declared by the guaranteeing Powers in 1863 to be an 'hereditary constitutional monarchy'. This was held during the Great War to justify

the three Powers, who happened to be the principal members of the Entente, Great Britain, France, and Russia, in putting pressure upon and finally procuring the abdication of King Constantine on the ground that he was not acting constitutionally in rejecting the advice of Venizelos. It may be argued that if the signatories to a treaty neglect their rights of preventing or determining any changes within a state, the constitution of which they have settled, it becomes a purely domestic affair. The most striking example in modern times is the transformation of the German Confederation of 1815 through the North German Confederation of 1866 into the German Empire of 1871. The original creation was the product of the Vienna Treaty in its smallest details; and its object had been to secure a comparatively feeble Germany under the dual leadership of Austria and Prussia. In 1866 Austria was driven out by violence, and an exceedingly strong North German Confederation was created by Bismarck under Prussian domination. By international law this action was certainly illegal, yet in spite of a Russian suggestion of interference, none of the other Great Powers took any part in the business. Similarly, the completion of this work five years later by the inclusion of south Germany within a new empire was carried through without the leave asked or given of any of the joint artificers of 1815. It was of course because the Concert lacked the collective will to assert their rights that this tremendous change, so momentous for future European relationships, became the unchallenged sequel of successive victories by Prussia over the two Powers which tried to prevent it, as the isolated defenders of their own presumed national interests. The unification of Germany is essentially the creation of a power-state out of a loose federal bond; it was forcibly opposed by those whom it immediately threatened: it was ignored by the collective body of states who had been responsible for its embryonic form.

It follows to justify another exclusion from this chapter :

the process by which the British colonies were gradually transformed during the past century into the British Commonwealth of free and autonomous nations. Admittedly this is both the greatest and the most genuinely peaceful transformation of status in the history of the world. Why then should it be denied a place? It is perhaps a sufficient if not a logical answer to reply that any account, possessing the slightest value, would be necessarily on a scale entirely out of proportion with this work. Moreover, students fortunately possess already an abundance of easily accessible material on this subject. Finally, it is after all an enormous domestic experiment in constitutional decentralization; it has no doubt exercised a great influence upon, and may contain important lessons for other countries, which, however, have remained throughout spectators and not fellow actors. With it might appropriately be compared the process which in 1867 converted Austria into the Dual Monarchy, by the establishment within Hungary of an almost completely autonomous régime.

Again we may mention, but summarily dismiss, the somewhat indeterminate process by which a state ascends to the dignity of a Great Power. In 1815 the Great Powers had indeed a definite status, partly self-assumed and partly defined by the obligations and duties of the Quadruple Alliance, to which France was also admitted as a fifth in 1818. But during the nineteenth century these lines were blurred. The Quadruple Alliance became obsolete: the only criterion of a Great Power was the right to receive invitations to European conferences; and this right depended upon the population and resources of a state and its capacity for using them effectively. Italy, for example, was so honoured first in 1867, and her advance in status may be dated from that year. Moreover, outside Europe the United States and later on Japan began to impose themselves upon the world as Great Powers, without any invitation, and without any assumption of any

special responsibilities within the international family. With the formation of the League of Nations it was the obvious intention of its creators that the position of a Great Power should ultimately be defined by a permanent seat on the Council. This would have amounted again to a formal recognition together with an allotment of duties comparable with that of the original Concert of Europe. Its achievement has been completely defeated by the refusal of the United States to join the League, and the withdrawal of Japan and Germany.

Within the city of independent states there are indeed many mansions, there are the slums as well as the fashionable quarters. Independence is a relative term, for there is no state, whether a member of the League or not, which is not inevitably limited to some extent in its freedom of action. What limitations must be regarded as creating a definite lowering of status peacefully assumed or imposed? The King of Naples after 1815 concluded a treaty with Austria undertaking not to introduce a constitution without the leave of the latter; Roumania agreed to make no treaty other than a commercial one with a foreign Power without the approval of Austria; Afghanistan agreed to use Britain as the intermediary for her foreign relationships; Luxembourg between 1871 and 1914 belonged to the German Customs Union and her railways were run by a Prussian company. All such restrictions are clearly very derogatory to independence and are plainly the hallmark of a parasitic or subservient relationship. Yet such states can hardly be said to have undergone a change of status, though they have slipped down the scale of international precedence. It seems to be the right of external interference guaranteed by treaty which conclusively marks an inferior category. It does not appear certain whether a simple guarantee of the integrity or independence of a state would justify the guarantors in forcibly preventing the guaranteed state from ceding part of its territory or laying down its independence. As has been

pointed out earlier, the European guarantee of Scandinavian integrity simply lapsed in 1905, when Norway separated from Sweden. The guarantors did not interfere on the grounds that they were entitled to prevent such an issue, or at least to decide it for themselves. But obviously such a right of interference is implicit in any guarantee, which is conditional upon the following of a certain prescribed action by the state so guaranteed.<sup>1</sup> As we have seen, Greece after 1863 could not legally change her constitution without the assent of the guaranteeing Powers, though it is most doubtful whether they would have normally enforced their desires by military coercion, as they did during the Great War, to safeguard their strategic safety.

Similarly, the guarantors of Belgium had not only the duty to enforce her to maintain the neutrality enjoined by the Treaty of 1839, but claimed also the right to compel her by force, if necessary, to defend that neutrality if violated, or at least to land troops on her soil without her leave to combat such a violation.

### I. *Neutralization*

To be neutralized by guarantee is in effect the most important change of status possible for any state without losing its independence. This is a product of nineteenth-century international law. It has been imposed upon small states, not primarily in their own interest, but in that of the Great Powers. The object has been to preserve the peace of Europe by making it too dangerous for great covetous neighbours to dispute the possession of strategically

<sup>1</sup> By the Treaty of Paris 1856 all the signatory Powers guaranteed the integrity and independence of Turkey, making note at the same time of the high value of the Sultan's edict recording his generous intentions towards the Christians living within the Empire. But in order to show that reform in Turkey was not a condition of the guarantee they stated that 'it could not in any case give to them the right to interfere, either collectively or separately, in the relations of the Sultan to his subjects, or in the internal administration of his Empire'.

important territory which no one could endure to see in the hands of another. It is in fact a notice with an imposing signature to warn off trespassers. Such a signature is necessary, for the mere declaration of an intention to respect the neutrality of a given state, such as the Powers accorded to the Congo Free State, constitutes no guarantee and therefore no effective protection. A mere unilateral declaration on the part of any state proclaiming its perpetual neutrality, such as Iceland issued in 1918 or Belgium in 1936, has no validity in international law. It is merely a statement of policy, which other states may or may not accept.

The effectiveness of a guarantee depends both upon what it covers and upon the arrangements made by the guarantors for putting it into operation. The guarantee ought to include not only neutrality but also independence and integrity; without the two latter the former might be a mere dead letter.

During the nineteenth century three countries have been neutralized—Switzerland, Belgium, and Luxembourg—of which now only the first named retains that status by international guarantee. We must now consider why the Powers took such action, and what steps followed in each case to make it effective.

The motive is always the same—the strategic importance of the territories in question. Any Great Power in command of Switzerland possesses a fortress from which it can strike on interior lines in any direction. Centuries of warfare attest the key position of Belgium, both as a buffer between France and northern Germany and for the maritime security of England. Luxembourg, though small in area, is a natural centre of communications. By the end of the nineteenth century five railways and nine main roads radiated from the capital towards the chief strategic points on the French, German, and Belgian frontiers. In French hands it secures the defence of the Moselle line and facilitates an advance down that river. In 1914 its possession



by Germany was essential for the Schlieffen plan: it was the essential link between the offensive and defensive wings of her armies, and by opening the way to the gap of Stenay imperilled the whole line of the Meuse from the north.

It is clear, therefore, that the transference of at least the first two of these areas to a Great Power would upset the whole balance of power in western and central Europe.

Switzerland had for centuries understood the importance of such a foreign policy as should give no provocation to any of her great neighbours. By the Peace of Westphalia she had gained the formal recognition of her independence and held herself neutral in all the European wars. This neutrality she made profitable to herself and valuable to the belligerents by freely permitting her famous mercenaries to serve under the banner of any European prince. The subjection of the country by Napoleon both made its further neutrality impossible and opened the eyes of Europe to its commanding position as a jumping-off ground for attacks on Italy, Austria, or southern Germany.

The Allies therefore at the end of the Napoleonic Wars consented to neutralize Switzerland. That this procedure was in their own interests, and not in that of Switzerland, which asked for it, is clearly seen by the compulsion which they placed upon her to take part in the campaign of the Hundred Days, in order that the allied armies might be the more speedily concentrated in France after their march from the east.

Strictly speaking, there was no guarantee of neutrality, but only its acknowledgement by the Great Powers (Nov. 20, 1815). There was, however, a guarantee of both the independence and inviolability of Switzerland. The nature of the guarantee, whether collective or joint and several, is not stated. To complete Swiss neutrality on the south-west, the northern provinces of Savoy, Chablais and Faucigny were also neutralized and demilitarized in the event of 'open or impending hostility between the

neighbouring Powers'. The Piedmontese troops were in that event to be withdrawn and those of other countries forbidden to enter, with the exception of Switzerland, which was entitled to occupy them for her own security.<sup>1</sup>

It will be noticed that no restrictions were placed upon the military policy of Switzerland; she was left free to defend her neutrality by any means in her power; nor was she like Belgium enjoined by treaty to preserve neutrality towards all other Powers. Intervention by the guaranteeing Powers has never been necessary, though an agreement in principle to intervene was arrived at in 1847 on the occasion of the war of the Sonderbund, which threatened Swiss integrity. The delays imposed by Palmerston<sup>2</sup> and the speedy success of the federal forces made action unnecessary.

As regards Belgium, it is, strictly speaking, incorrect to speak of any change of status. The neutralization was a condition of its recognition as a *de jure* independent state by the Great Powers. However, it actually maintained a provisional *de facto* existence for nine years (1830-9) before either its frontiers or its neutrality were finally settled by treaty. Its creation has already been narrated. We have merely to analyse the guarantee of neutrality. Article 7 of the Treaty of April 19th, 1839, declares that 'Belgium within the limits specified' in the treaty 'shall form an independent and perpetually neutral state. It shall be bound to observe such neutrality towards other states.' To this treaty the five Great Powers and Holland were parties, but not Belgium, which was created by it. Belgium and Holland then signed a separate treaty embodying identical articles. These articles were then placed under a guarantee of the five Powers by a separate treaty with Belgium.

<sup>1</sup> When France obtained Savoy in 1860 she took over those obligations. They lasted until 1928, when Switzerland was compelled, in exchange for commercial advantages, to agree to their abrogation by France.

<sup>2</sup> The continental Powers desired intervention on behalf of the Ultramontane and Conservative Sonderbund to which Palmerston was opposed. His delays were therefore in the interests of the Federal Government.

Thus the Powers guaranteed the whole settlement and not merely the neutrality of the new state.

As in the case of Switzerland, no qualification is given of the guarantee. As is well known, Great Britain has always held that it was joint and several; that is to say, that it imposed the duty of intervention upon each of the signatories individually in the event of violation, and did not make that duty contingent upon common action by all the guarantors. That each guarantor has the several right of intervention is, of course, implied in the nature of any guarantee, even if expressly described as collective. That Great Britain has always interpreted this right as a duty in the case of Belgium lies not so much in the wording of the treaty, which is ambiguous, as in the jeopardizing of vital British interests by its violation from any quarter. In 1870 two separate treaties were made by Gladstone with both France and Prussia, after the outbreak of war, by which Great Britain pledged herself to enter the war for the defence of Belgium against its violation by either belligerent. This engagement did not imply that the treaties of 1839 had lapsed but that Britain was determined to make their guarantee immediately effective by individual action.

Belgium was subjected to no limitation of armaments. Her freedom of action was, however, restricted in two ways. She was forbidden to make Antwerp into a naval base, for it was to remain 'solely a port of commerce'.<sup>1</sup> Secondly, she was enjoined to preserve neutrality towards all other states. This prevented her from joining any alliance which might result in war, and has in fact prevented any European combination. If, as German propaganda falsely asserted during the Great War, she had shared in the military plans of the Entente she would no doubt have forfeited her neutral status in international law.

<sup>1</sup> This did not forbid the fortification of Antwerp on the land side. By 1914 it had been formed into a great fortified camp for the anticipated withdrawal of the Belgian field army into safety, if the country was invaded.

In comparison with Belgium the neutralization of Luxembourg in 1867 seems a work of haphazard and unenthusiastic improvisation. The Grand Duchy which had been shorn of its western half in 1839 in favour of Belgium was under the personal rule of the King of Holland. In virtue of it he was a member of the German Confederation, and the fortress of Luxembourg, reputed one of the strongest in Europe, was held as a federal fortress by a Prussian garrison. This latter arrangement was not made by the Vienna Treaty but by a later and separate convention between the Kings of Prussia and Holland. In 1866 Prussia, having defeated Austria, dissolved the German Confederation and substituted her own centralized creation in the north. The Vienna Settlement having been thus torn up, Luxembourg, as Bismarck afterwards confessed, was no longer legally attached to Germany, nor was its capital a federal fortress. Nevertheless, the Prussian garrison remained there, rather as a symbol, for it was very weak, than as a pledge of security against France. The Emperor Napoleon having come to realize the truth of his marshal's bitter remark, 'It is France who was conquered at Sadowa', looked eagerly about for compensations against the vastly increased strength of a menacing Prussia. Being unable to secure any German territory west of the Rhine, he turned to Luxembourg as a minimum counterweight. This he foolishly hoped might be a stepping-stone to the acquisition of Belgium.

Bismarck was secretly approached and being not yet ready for the war to which he looked forward as an ultimate necessity undertook to raise no objection, provided that he was confronted with a *fait accompli*. Negotiations for its sale were therefore undertaken with Holland. The secret, however, leaked out before any conclusion had been reached at the end of March 1867. Bismarck pronounced strongly against the transaction in the Reichstag. Public opinion on either side of the Rhine, already snarling and suspicious, was inflamed. The point became one of honour

from which neither state could recede without humiliation. It looked as if a war desired by neither in 1867 would be precipitated.

Great Britain, Austria, and Russia were, of course, concerned as guarantors of the Treaty of 1839 by which the existing limits of the Grand Duchy had been settled. They would have raised no objection to the proposed transfer, which would have been a reasonable addition to the defensive security of France against an increased and ever-growing Prussia. However, as soon as the undesired publicity broke out, the King of Holland withdrew his assent to the sale, which had been provisionally agreed.

France and Prussia were therefore faced with the undesired prospect of going to war on the comparatively trivial issue of the retention of the Prussian garrison. They were therefore glad to turn to the good offices of the other Great Powers, who were anxious to help them out. The initiative was taken by Great Britain and Austria. Neither of them felt any keen interest in Luxembourg, or was inclined to accept any serious responsibility for its future. They merely desired some solution which would be accepted by France and Prussia. A conference was accordingly assembled in London in May 1867.

In deciding that Luxembourg was no longer a member of the German Confederation, and that the Prussian garrison should be withdrawn, the conference in effect recognized, what was obvious, that the events of 1866 had destroyed the whole basis of the settlement of Germany in 1815. It further ordered the demolition of the fortress lest its continued existence should tempt either France or Prussia to seize it. With less obvious reason, it demilitarized the Grand Duchy by providing that no troops should be retained except those required for police purposes. Doubtless Luxembourg could never hope to offer any serious resistance to a great aggressor. But having forbidden it to use such resources as it possessed it was clearly equitable that the conference should provide it

with as adequate a protection as possible. But the guarantee of its neutrality which the Great Powers assented to give was very imperfect. Prussia had urged that it should be 'such as now exists in the case of Belgium'; this she interpreted as one unconditionally binding upon each of the signatories, and this she believed to have been secured by the treaty. This was far from the intention of the British Government as represented by Lord Stanley, the Foreign Minister. To reduce rather than to extend commitments was certainly the desire of Parliament without distinction of party. The humiliating failure to intervene with any effect in Schleswig-Holstein and Poland had led to a general desire in Britain to withdraw as far as possible from the Continent. Accordingly, at Stanley's instance, the guarantee was qualified by the adjective 'collective'; and his father, the Prime Minister Derby, took pains publicly to explain it away by stating that 'a collective guarantee is one which is binding on all the parties collectively, but which if any difference of opinion should arise, no one of them can be called upon to take upon itself the task of vindicating by force of arms'. This really meant that if Luxembourg was violated she would find no defender, for if Great Britain would not so act, it was perfectly certain that Russia and Austria would do nothing. As is well known, Grey in the House of Commons expressly denied that the German invasion of August 2nd, 1914, constituted a *casus belli* for Great Britain. In 1867, however, Prussia was the only Power which pressed for the more stringent form of obligation.

The motives which determined the Congress of Vienna to create and neutralize the free city of Cracow, the ancient capital of Poland—a morsel and a reminder of her former independence destroyed in 1795—was not primarily consideration for its inhabitants but its strategic position guarding the northern access to the Moravian gate, which opens the way into the Bohemian plain and the heart of Austria. The jealousy between Austria and Russia pre-

vented it from being allotted to the former Power. It was therefore neutralized but placed not under the guarantee of all the Powers, but of Austria, Prussia, and Russia, who had destroyed Poland between them and feared any centre of irredentism. While Cracow was forbidden to harbour refugees, the three Powers were equally forbidden to introduce troops there under any pretext whatsoever. In 1846, however, Metternich, under the pretext that a Polish rising in Galicia had been instigated and supported from Cracow, prevailed upon the other two guarantors to permit its annexation by Austria. From the point of view of the guarantors this may be considered as a peaceful change in their mutual policy, but Cracow was of course completely incapable of offering the resistance which her will would have dictated. Few actions in history are more short-sighted than the tearing up of a clause of the Vienna Treaty, that charter of conservatism, by its own arch-contriver Metternich with the support of the two other pillars of European reaction. It was a precedent for, and an incitement to, the wholesale modification of that instrument by revolution and war within the next fifteen years.

As we have already noticed in the cases of Chablais, Faucigny and the Island of Corfu, areas as well as states are susceptible to neutralization by international guarantee.<sup>1</sup> It is also possible for two states to agree between themselves to impose similar servitudes upon their own frontiers. Such was the famous Rush-Bagot agreement in 1817 by which Great Britain and the United States agreed to limit the naval forces maintained by either upon the Great

<sup>1</sup> The neutralization and demilitarization of the Black Sea (1856) and of the Rhineland (1920) illustrate how similar provisions may be imposed as a result of war, and how unlikely they are to survive the recovery of the defeated enemy. The Aaland Islands, which command the entrance to the Gulf of Bothnia, were also demilitarized by the Treaty of Paris (1856) at the instance of Sweden, who considered that Stockholm was menaced by their fortification. Unlike the Black Sea restriction, this latter survived until 1914, and was peacefully reaffirmed when Finland in 1921, by the decision of the Council of the League, was confirmed in her sovereignty over these islands.

Lakes to four small sloops, sufficient merely for revenue control. This arrangement, which was denounceable at six months' notice, has stood the stress of all Anglo-American disputes; and the fact that the four thousand miles of Canadian frontier have been thus virtually demilitarized has been the greatest safeguard against the precipitation of a conflict at critical moments by some warlike incident. In 1888 a treaty signed between Argentina and Chile neutralized the Straits of Magellan and prohibited the erection of fortifications throughout its length. This neutralization, however, has never been recognized as binding on any Power except the two signatories. Similarly, the treaty of separation between Norway and Sweden in 1905 provided for the destruction of fortresses on the common frontier and the establishment throughout of a neutral zone into which no troops could be moved. The permanence of such freely negotiated bilateral arrangements is in striking contrast with the failure to dictate such a restriction without reciprocity upon a beaten enemy.

## II. *Disguised Annexation or Control*

The object of imposing a guaranteed neutrality upon a state is solemnly to emphasize and to safeguard as permanent the consequent change of status. In the cases which now come before our consideration the intention is very different. It is rather to conceal by diplomatic draftings the consummation of a change far more drastic and fundamental than appears from the language in which it is described. The Berlin settlement (1878) provides two excellent illustrations; Austria obtained the right to occupy and administer Bosnia-Herzegovina, and Great Britain the same privilege in Cyprus by a separate convention with Turkey. These stipulations doubtless were the result of the Russo-Turkish War. As, however, they accrued to the benefit of neutrals, and were serviceable in preventing the conflagration of a wider conflict, they may be somewhat doubtfully included within the catalogue of peaceful change.



Now legally no sovereignty was in either case transferred by the Porte; both remained part of the Sultan's possessions. But in fact they became in almost every respect the integral possessions of their new administrators. This result was practically assured by the deliberate omission of any time-limit to the occupation of Bosnia-Herzegovina,<sup>1</sup> and the placing of an improbably hypothetical one to that of Cyprus. The French knew well enough the vital importance of such a term when they continually pressed Britain to name a definite date for her withdrawal from Egypt. By expressly renouncing such a request in the Anglo-French agreement of 1904, they realized, just as Britain did, that they were agreeing to a British dominion over that country which would be permanent unless Great Britain were herself to denounce it.

Consequently, when the time came for Austria to annex Bosnia, and Great Britain Cyprus, the inhabitants of the two areas passed under the new sovereignty without any noticeable change. It may well be asked why such a diplomatic fiction was thought necessary or advisable. A glance at the international situation in 1878 will help to make this clear. The object of the Great Powers, with the natural exception of Russia, was to prevent Turkey from losing any more territory than the issue of the unsuccessful war made absolutely inevitable. This was not due to affection for Turkey but to the belief that Russia must benefit directly or indirectly from any such spoliation. Even by the terms agreed upon at Berlin (which had been virtually settled beforehand by secret negotiation) Russia might be held to have gained a great preponderance in the Balkans. To preserve the balance of power, and in particular to secure their own interests, Austria and Great Britain intended to obtain a compensating advantage but

<sup>1</sup> Andrassy, the Austrian plenipotentiary, under Turkish pressure signed a declaration on the same day as the signature of the Treaty to the effect that 'the rights of the Sultan in Bosnia and Herzegovina will be in no way affected by the occupation, which is to be regarded as provisional'.

without demanding of Turkey any formal sacrifice of sovereignty. Austria had indeed already, eighteen months previously, gained the consent of Russia as a condition of non-interference in the war which broke out against Turkey in the spring of 1877. The decision to acquire Cyprus was not taken by Beaconsfield's Cabinet till March 1878. The former was on the assumption, and the latter after the completion, of the Russian victory.

If further it is recalled that Great Britain and Austria were two of the Powers (France being the third) who had pledged themselves by the Tripartite Treaty of 1856 to a joint and several guarantee of the integrity of the Turkish Empire, it becomes obvious why they chose the method of disguised rather than of open annexation.

The pretext put forward by Austria<sup>1</sup> was the very real need for the re-establishing of law and order in these rebellious and anarchical provinces. This duty she admittedly performed very efficiently after being obliged to maintain 200,000 men for the first year to subdue a formidable insurrection. Her real aim was to strike a heavy blow at the embryonic aspirations of the southern Slavs towards unity, to separate Montenegro from Servia, and by the right of garrisoning Novi Bazar to keep the way open to Salonika in the event of the collapse of Turkish rule in Macedonia.

The territory thus acquired was administered as a joint

<sup>1</sup> Cf. the proclamation issued on the entrance of Austrian troops: 'The Emperor has learnt with grief that civil war is desolating this beautiful country . . . that commerce and employment are suspended . . . and that misery has invaded both town and country. Great and cruel events have deprived your Government of the power of re-establishing . . . the calm and union on which the welfare of your country depends. The Emperor has called the attention of the European States to your situation, and it has been unanimously decided that Austria-Hungary shall give back to you the peace and prosperity of which you have been so long deprived.' It will be noticed that the proclamation admits a kind of European mandate for the occupation of Bosnia which was quite lacking in that of Cyprus, a private arrangement between Great Britain and Turkey, not mentioned in the Treaty of Berlin.

possession of the Dual Monarchy, without any regard for the shadowy sovereignty of Turkey. As early as 1881 conscription was introduced there, a measure which writers on international law have stigmatized as definitely illegal, as putting the inhabitants under the hypothetical necessity of fighting against their lawful sovereign.

In 1908, by a unilateral denunciation<sup>1</sup> of the clause of that treaty by which she acquired her rights, Austria annexed the two provinces. The occasion was the Diamond Jubilee of the aged Emperor Francis Joseph, who sentimentally desired not to leave the Empire smaller than on his accession—for Bosnia and Herzegovina acquired in full sovereignty might be held an equivalent for the loss of Lombardo-Venetia. The compelling reasons, however, were those of hard *Real-politik*. Ever since Peter Karageorgievich had ascended the Serbian throne in 1903 after the murder of his Obrenovich predecessor, the alliance of that country with Austria had been transformed into an ever-growing hostility. By propaganda and the work of secret societies within and without the Dual Monarchy, the ideal of Yugoslav unity was being preached. It was therefore a natural aim of Austrian policy to strike a blow at such aspirations by the annexation of Bosnia-Herzegovina. The need for immediate action came with the Young Turk revolution in July 1908. It was at first believed in Europe that its results would be a liberal régime, which would encourage a desire for reunion with Turkey not merely among the Young Turk Nationalists, but also among the Bosnians, or at least among the very influential Moslem section of that province.

While Austria was successful in her main object without war, she was forced to make two concessions. A sum of £2,500,000 was paid to Turkey as compensation for the Crown lands in the annexed provinces, while owing mainly

<sup>1</sup> Unilateral denunciation as a form of peaceful change will be treated in a later section of this chapter, which will deal with the international aspect of Austria's action in 1908.

to Italian pressure<sup>1</sup> the garrison in the *sanjak* of Novi Bazar was permanently withdrawn.

The pretext alleged by the British Cabinet for the occupation of Cyprus was even more cynical than that put forward by Austria. It was to 'enable Great Britain to make necessary provision for executing her engagement' to defend the Asiatic possessions of Turkey in the event of any future attack upon them by Russia. The cynicism lies in the fact that, as we have noted, Great Britain was already pledged by the Tripartite Treaty to an individual guarantee of all the Sultan's possessions. She was therefore taking Cyprus as a reward for a promise in the future partially to fulfil an existing engagement. This promise was also subject to an engagement by the Sultan to introduce 'necessary reforms' into these territories, though no right of interference was given to Great Britain in the event of its non-fulfilment.

Beaconsfield had in fact reached the conclusion that it was no longer possible or desirable for Great Britain to guarantee the integrity of European Turkey. He did, however, regard the defence of Asiatic Turkey as a great imperial interest for the security of India, and believed Cyprus to be a valuable acquisition for that purpose. In so doing he seems greatly to have over-estimated the capacity of its harbours as a naval base from which an expeditionary force could be landed at Alexandretta to protect Armenia.

In reality the building of the Suez Canal and the acquisition of a controlling interest in its shares by Great Britain in 1874 had led British naval opinion to believe that a possession in the eastern Mediterranean was essential in order to retain our control over the whole sea and in particular to safeguard the new route to India.<sup>2</sup> Crete, with its magnificent harbour of Suda Bay in which it was said 'all

<sup>1</sup> Austria was violating an article of the Triple Alliance as well as of the Treaty of Berlin; for she had promised to come to a previous understanding with Italy before altering the *status quo* in the Balkans.

<sup>2</sup> 'Over and over again did we curse Gladstone for having given up Corfu, which would have been invaluable to us' (Sir Stafford Northcote).

the fleets of the world can lie at anchor', would have been strategically preferable. It was doubtless rejected because of the intense Hellenism of its comparatively homogeneous population. The importance of Cyprus, which Beaconsfield had so exaggeratedly described as 'the key of the Eastern Mediterranean', was of course enormously diminished by the British occupation of Egypt in 1881.

With regard to the administration of the island, the British powers, unlike those of Austria in Bosnia, were to a certain extent limited, and reservations made in favour of the Sultan. He was to receive as tribute the excess of revenue over expenditure, and could sell or let Crown lands, while the Mussulman tribunal for the government of religious matters was guaranteed its continuance under the occupation. Finally it was agreed that Cyprus should be returned to Turkey if Russia returned to her any of the Asiatic conquests of the late war. It was annexed and created a Crown colony after the declaration of war against Turkey in 1914.

It is curious to note that a change in the status of another area belonging to Turkey inserted by Beaconsfield's especial insistence in the treaty for the express purpose of preventing its veiled annexation by another Power, led directly to this very same result. The province of Eastern Roumelia, that portion of Turkey south of the Balkans predominantly inhabited by Bulgarians, had been added to the 'Big Bulgaria' by the Treaty of San Stefano. The secret Anglo-Russian agreement of May 30th, 1878, had arranged for this southern portion to remain under Turkish rule with a large measure of self-government. At the congress itself Beaconsfield, after a violent struggle with the Russian plenipotentiaries, secured the right of Turkish garrison within this province. The Porte was thus empowered to hold the military line of the Balkans. 'There is again a Turkey in Europe', Bismarck is reported to have exclaimed on hearing of the Russian withdrawal.

But in effect the Turk was quite unable to re-establish

his authority there. Not a single soldier passed the limits of Eastern Roumelia. Only seven years later, in September 1885, the Turkish Governor-General was kidnapped and conveyed over the frontier, and the union of 'South Bulgaria with North Bulgaria' proclaimed. Without consulting any of the signatory Powers of the Berlin Treaty, Prince Alexander hastened to Philippopolis, the southern capital, and accepted the Union. Thus Bulgaria, though still tributary to a suzerain Turkey, fulfilled its desires of 1878. By a singular fortune it was Great Britain which welcomed and Russia which vehemently protested against this infraction of the treaty. Alexander of Battenberg, the ruler of Bulgaria, was a near relative of both the British and Russian ruling sovereigns. But while he was a favourite protégé of Queen Victoria, he had irritated the Czar by a policy of independence, interpreted as base ingratitude towards his liberator. Hence it suited British policy to see a big Bulgaria conscious of its national spirit and unlikely to dance to the Russian pipe. Russia, on the other hand, had no intention of aggrandizing a ruler who had so little respect for the great head of the Slav family. Next year Russia took a personal revenge for the policy which she had been unable to thwart by kidnapping Alexander and forcing his abdication. The final stage in Bulgaria's progress was taken in 1908 when Prince Ferdinand proclaimed his country's independence and took for himself the title of 'Tsar, thus completing the destruction of the arrangements made at Berlin.<sup>1</sup>

Somewhat analogous to these veiled annexations are the less formal methods by which Great Powers have secured control and a virtual protectorate over small states for which they feel a peculiar interest. This process, well known in America as 'dollar diplomacy', has enabled the

<sup>1</sup> Bulgaria undertook to pay Turkey £5,000,000 in compensation for the Orient Railways, which were Turkish property. This was a mere paper transaction, as it was effected by Russia's reducing by that amount the indemnity which Turkey had owed her since the conclusion of peace in 1878.

United States during the twentieth century to exercise a paramount and exclusive interest over Cuba, San Domingo, Nicaragua, Honduras, Haiti, and, on the west coast of Africa, over Liberia. Cuba, indeed, is more or less formally a protectorate, for she has embodied in her constitution the limitations which Congress originally imposed upon her quasi-independence. The United States has the right of coaling stations, of intervening to preserve order, and controlling the diplomatic and financial relations of Cuba with other Powers. In other cases such intervention has been generally exercised not in virtue of a specific treaty, but of American control over the finances of the state in question. For example, San Domingo was forced in 1905 to accept an American Receiver-General who allotted 55 per cent. of its revenues to the payment of debt. This régime was followed in 1913 by a military occupation lasting eleven years. The object of such measures was not primarily political but to give the members of the United States a guarantee of the good order necessary for the payment of dividends. It was known that the states concerned were quite incapable of offering resistance, yet it would not be true to describe them as simply intimidated into acceptance. They realized that if they required loans for their development and borrowed almost exclusively from their great neighbour, order and solvency became a necessary condition of their existence, to be imposed from without if it could not be maintained from within.

### III. *Waterways*

A number of rivers, lakes, straits, and canals have received a specific status as a result of international negotiations. In some cases, pre-eminently that of the Dardanelles, the motive has been almost exclusively political. Generally, political and economic considerations have gone hand in hand, as for example in the Danubian Commission created by the Treaty of Paris (1856) to ensure the free navigation

of that river by an expert international body. This is no less true where the question arises of fixing the status in international law of such new arteries of commerce as the Suez and Panama canals. Their enormous strategical importance made it necessary to determine not merely the conditions of the peaceful transit of merchandise, but of the passage of belligerent warships and munitions. It is only when considering the conventions which govern the conditions of navigation on such lakes as those of Geneva, Constance, or the Congo, or on some of the great African rivers, that we find ourselves almost entirely within the economic sphere of international organization.

The general though not the invariable object of all such conventions has been to enlarge rather than to restrict the freedom of navigation. A famous instance to the contrary was of course that clause of the Treaty of Westphalia which closed the navigation of the Scheldt in the interests of England and Holland with the object of ruining the port of Antwerp. It is surprising that this 'unnatural' prohibition as the French Revolutionists described it, should have lasted for nearly 150 years until the Convention denounced it, when engaging in war with Holland, and by force of arms opened the estuary.

This appears indeed the only international convention which has been aimed at the restriction of commerce in modern times.

As we have seen already, the demilitarization of areas of water is not uncommon. The régime imposed upon the Dardanelles by the Treaty of London of 1841 was not of that character, for the Dardanelles were demilitarized only between 1923 and 1936. It simply forbade the transit of foreign war-vessels in time of peace, but imposed no limitations upon the freedom of Turkish action in peace or war. In fact it professed to be the recognition by the Great Powers of the ancient rule of the Sultans regarding the navigation of the Straits. This was indeed, generally speaking, true; the rule having been altered by the Sultan



under duress in favour of Russia by the Treaty of Unkiar Skelessi in 1833;<sup>1</sup> by this instrument Russia promised Turkey aid by land and sea in any defensive war in return for the sole and exclusive right of passage for her warships. Strictly speaking, therefore, it was this treaty rather than that of London eight years later which changed the status of the Dardanelles. But nevertheless such a statement would be misleading. Russia had never tried to make use of her new privileges, for she knew that to do so would involve her in war with Great Britain, who had refused to recognize the validity of the treaty. In 1841 the Sultan's rule was embodied in a treaty between Turkey and the five Great Powers. The closure of the Straits to all war-vessels 'so long as the Porte is at peace' therefore became part of the public law of Europe, and was no longer dependent upon the mere exercise of his sovereignty by the Sultan. The Sultan could no longer, if he so desired, give preferential treatment to any single Power. On the contrary, each signatory 'engaged to respect this determination of the Sultan, and to conform to the principle above declared'. It may be further pointed out that the rule operated to the disadvantage of Russia, and to the advantage of the western Powers, Great Britain and France, whose object was to preserve the integrity of Turkey. So long as Turkey was at peace, the Russian Black Sea fleet could not get out into the Mediterranean. But if Turkey were at war it was practically certain that Russia would be involved as her adversary and would be unable to force the Straits. On the other hand, the western Powers would be able to send their fleets into the Black Sea with perfect safety to oppose Russia in the event of a war between that Power and Turkey.

In 1871, in return for the formal permission given to

<sup>1</sup> Turkey having been defeated by the rebel Pasha of Egypt, Mchemet Ali, was in danger of losing Constantinople. Being unable to secure effective help from either Great Britain or France, she was compelled to turn to her hereditary enemy, Russia.

Russia to carry out, in technical accordance with international law, her denunciation of the Black Sea clauses of the Treaty of Paris, the Treaty of 1841 was so modified as to give Turkey an opportunity of calling in naval assistance before war actually broke out. The Sultan was allowed to open the Straits 'in time of peace to the vessels of war of friendly and allied Powers, in case the Sublime Porte should judge it necessary in order to secure the execution of the stipulations of the Treaty of Paris'. With this modification, of which the Sultan never availed himself, the Treaty of 1841 remained both in force and respected until the Great War. It suffered a spectacular violation when the German cruisers *Goeben* and *Breslau* passed through the Straits to Constantinople on August 10th, 1914, with the connivance of Turkey.

We may now turn to instruments the object of which is not to restrict but to enlarge the freedom of navigation. It is not necessary to dwell at any length upon them, for, as has been previously pointed out, they belong rather to the sphere of international organization than to that of peaceful change, and they are adequately summarized in any text-book of international law.<sup>1</sup>

The Berlin Act of 1885 is memorable in having extended the principle of freedom of navigation to Africa, by stipulating that the whole of the Congo Basin together with Lake Congo and the River Niger should be open without restriction to the commerce of all nations.

In 1857 a long-standing hindrance to the free circulation of trade in the Baltic was removed by the Treaty of Copenhagen. From time immemorial Denmark, in virtue of her sovereignty over the Sound and the Belts, had charged dues on all ships and merchandise of foreign nations coming from or into the Baltic. The growing dissatisfaction with this anachronistic system had been voiced by the United States, which two years previously had denounced the treaty

<sup>1</sup> See, e.g., Fauchille, *Traité de droit international public*, tome 1, 2<sup>ème</sup> partie, ch. 1, for a full and clear account.

by which they, like many other countries, had obtained from Denmark the 'most favoured nation' treatment with regard to these dues. As a consequence of the Treaty of 1857, the dues were capitalized for a sum of 91 million francs, payable in twenty years, by each of the signatory nations<sup>1</sup> in proportion to the tonnage passing annually through the straits. It was further stipulated that this future freedom should apply also to those countries which had not been signatories of the treaty.

If we examine the conditions which regulate the two great artificial canals of modern times, the Suez and the Panama Canals, it may be noted that with regard to the former a real change of status occurred after it had been constructed and opened, whereas in the latter its status had been both altered and fixed by treaty before the excavation had begun.

The statutes of the Suez Canal had from the first provided for liberty of passage for the ships of all nations on payment of the prescribed dues and forbade discrimination. But the general international position of the canal, and in particular its availability and defence in war-time, were not determined until 1888, or nineteen years after it had been opened for traffic.

By the Convention of Constantinople in that year the canal was declared open to the commercial and war flags of all nations both in peace and war. No act of hostility was to take place within or at the entrances to the canal, which was itself forbidden to be fortified. Egypt, acting for its suzerain Turkey, was to be responsible for the enforcement of these conditions. This convention, however, was not to become operative during the British occupation of Egypt.<sup>2</sup> It therefore remained rather as a declaration of

<sup>1</sup> This treaty was confined to European states. The United States shortly afterwards redeemed the tolls on their vessels by a capital payment arranged in a separate treaty.

<sup>2</sup> This reservation was due to the British Government which still regarded the occupation as temporary, though refusing to put a time limit upon it.

policy than as a binding instrument until the Anglo-French agreement of 1904, in which the British Government declared 'that they adhere to the stipulations of the Treaty of October 29th, 1888, and that they agree to their being put into force'. During the Great War they suffered the fate of so many treaties and were placed in the waste-paper basket.

The Panama Canal was the subject of two Anglo-American treaties, concluded sixty-four and thirteen years respectively before it was open to traffic. The former, the Bulwer-Clayton Treaty of 1850, had provided that neither country should establish an exclusive control over the canal or occupy or fortify any point in Central America.<sup>1</sup> The ships of both countries were to use the canal freely both in peace and war, and its neutrality and protection were to be jointly guaranteed. Provision was made for the adherence of other states to this treaty.

In 1901, by the Hay-Pauncefote Treaty, Great Britain surrendered her right of joint control in return for the assurance that the provisions of the Suez Convention of 1888 forbidding discrimination against any nation should be made part of the statutes of the canal. The construction was accordingly undertaken by the United States which acquired from its puppet republic of Panama a strip of land, called the Canal Zone, in perpetual lease in order to provide for its defence. In 1914 President Wilson persuaded Congress that its proposal to exempt the coast-wise traffic of vessels of the United States from all dues while retaining an identical tariff for all foreign vessels would be a breach of the Treaty of 1901.

The status of the Panama Canal therefore, unlike that of Suez, is not determined by an international instrument but by a law passed by the United States, itself embodying the principles of an earlier Anglo-American treaty.

<sup>1</sup> This treaty was applicable to any canal built anywhere in Central America.

#### IV. *Unilateral Denunciation*

It has not infrequently happened in modern times that a state, without getting the consent of, or even consulting with, its co-signatories, has denounced portions of a treaty which imposed restrictions upon its freedom of action. In every case where this has been done it has been successful. The desired result has been obtained without war. But can it be described as pacific? Such instances normally refer to changes of status and not to changes of sovereignty, for the latter, unlike the former, could not be carried out without interfering directly and forcibly with another state except when, as in the case of Bosnia, the territory in question is already effectively occupied by the denouncer.

The essence of this method is to present interested parties with a *fait accompli* on the assumption that they will not be able or willing to go to war to reverse it. It is not necessary to enter into the general question of what circumstances justify a state in denouncing or refusing to carry out the provisions of a treaty. Our present inquiry is simply whether it can be legitimate for a state to denounce such clauses of a general treaty as it dislikes while adhering to the treaty as a whole. If the question is thus crudely put, there cannot be much doubt as to the answer. However, the matter is not as simple as it may seem. In the first place, to denounce a treaty of general settlement as a whole would be a futile and indeed meaningless gesture; though one which any independent state is obviously entitled to make in virtue of its independence if prepared to take the consequences. In practice, what those who are discontented with a treaty desire is not its destruction but its partial revision. But as in the past the revisers have also been the powers which made the treaty, there is clearly no guarantee that revision would be either entertained or impartially carried out. To ask the co-signatories to abandon the very point which they may have regarded as of capital importance to their security in framing the

treaty would be to court a refusal. To accept that refusal would be to renounce hope of peaceful change for a long period, to flout it might well provoke a war which a well-timed sudden unilateral denunciation would avoid.

Moreover, it is impossible to deny weight to Bismarck's favourite maxim that treaties are only valid '*rebus eisdem stantibus*'. Both the treaties of Paris and of Berlin had suffered violations which had been condoned or welcomed by the signatories before any of their clauses suffered unilateral denunciation. Again, while the treaties themselves might have remained intact, the balance of power might have been so much altered by other means that clauses tolerable at the date of their signature might come later on to be regarded as a burden of insufferable injustice. Yet there is no guarantee that the other Powers in question would be prepared peaceably to recognize it as such. The Protocol of London, January 1871, laid down 'that it is an essential principle of the law of nations that no Power can liberate itself from the engagements of a treaty, nor modify the stipulations thereof, unless with the consent of the Contracting Powers by means of an amicable arrangement'. This declaration was intended to make impossible in the future any such action as the Russian denunciation of the Black Sea clauses of the Treaty of Paris, which it immediately proceeded to condone.

But it is significant that the next half-century contained an unexampled crop of such denunciations. This was not merely because Russia had set a successful precedent, but also because the declaration was a very chilly encouragement to seekers of revision by the constitutional method. If every contracting Power had to agree, the chances of revision would be slight indeed. There would almost certainly always be one Power at least whose interests would oppose a solid veto. Until, therefore, there exists some completely impartial body capable of dealing effectively with the revision of treaties, it may be paradoxically and regrettably true that unilateral denunciation may be a more

effective and peaceful method of securing revision of status (though seldom of sovereignty) than to attempt the regular diplomatic method prescribed by the London Protocol. For it must be admitted that Europe at least has shown a remarkable capacity for accepting the *fait accompli* presented at the appropriate moment. Such a moment would naturally be one where as many as possible of the Powers likely to object would have difficulty in pushing their objection to an extreme. For example, the Russian repudiation of the Black Sea clauses in October 1870 was timed to coincide with the defeat of France, one of the Mediterranean naval Powers of whose action Russia would normally be apprehensive. The other, Great Britain, had been strenuously engaged in limiting the European conflict into which she might nevertheless be drawn as a belligerent in the event of the violation of Belgium. Similarly, in 1936, Hitler timed his re-militarization of the Rhineland to coincide with Italy's commitments in Abyssinia, which in their turn had drawn upon Italy the hostility of the other two principal members of the Entente, Great Britain and France.

Moreover, the desired action may be prepared by diplomacy. Gortchakoff had gained the consent of Bismarck for his action in 1870 by an undertaking to prevent Austria from joining with France in the event of a Franco-Prussian war. Austria had prepared the diplomatic path even more carefully for the annexation of Bosnia in 1908. As early as 1881, in adhering to the League of the Three Emperors (Germany, Austria, and Russia), she had obtained the sanction of the other partners for annexation at the appropriate moment. In 1897, however, Austria had agreed with Russia to co-operate and maintain the *status quo* in the Balkans. Since this agreement might naturally be held by the Russian Foreign Office to cancel the free hand given in 1881, Aerenthal, the Austrian Foreign Minister in 1908, arranged with his Russian colleague Izvolsky that in return for the desired

permission<sup>1</sup> he would raise no objection if Russia could obtain the sanction of the Powers for the passage of Russian warships through the Bosphorus and Dardanelles. Aerenthal then proceeded to get a general assent from Germany and Italy; and having done so, carried through the annexation without waiting for it to be part of a bargain actually secured for Russia. Izvolsky had thus been duped into allowing his rival to obtain an unrequited advantage. Both, however, were such masters of deceit that it has been found impossible to allot the burden of equivocation between them. The one thing certain is that Austria had left the two western Powers only in complete ignorance. None of the other three, however, were allowed to know the exact method and time at which she intended to denounce the treaty.

It may be pointed out that three motives have actuated states in this irregular behaviour. First, the object may be to benefit by the consequences of a *fait accompli*, which has not been directly brought about, though probably inspired, by the beneficiary. In such a case it would be feared that regular diplomatic action would involve the risk of a reversal of the *fait accompli*. Here, strictly speaking, the action implies rather the unauthorized acceptance of the breach of a treaty than its unilateral denunciation. Thus Charles Albert accepted the union of the Centre in 1848, which had been made possible by the Lombardo-Venetian revolt and his declaration of war on Austria, without asking the leave of the signatories of the Treaty of Vienna. Similarly, Alexander of Bulgaria, on learning that Eastern Roumelia had declared its union with his own principality, took the immediate road to Philippopolis on his own initiative, trusting that his act would be condoned by the Great Powers who had vetoed this acquisition in 1878. Secondly, this method may be used to shake off the burden of a restriction forcibly imposed which is regarded as an

<sup>1</sup> The proposal seems to have come from Izvolsky, who broached the question of the Straits and suggested this as an equivalent.



insult to the sovereignty of the Power concerned. History shows that such a unilateral restriction is almost sure to be unilaterally denounced.<sup>1</sup> The neutralization of the Black Sea deprived Russia of some of her best naval bases and placed her at an obvious disadvantage in the event of another war with Turkey.<sup>2</sup> Palmerston, its principal author, used to prophesy to Russian statesmen that 'it will last ten years: it will last my time'. Its life was actually fifteen years, from 1856 to 1871. Similarly the ban on conscription in Germany and the demilitarization of the Rhineland, which were imposed by threat of invasion without even the semblance of negotiation, survived for an almost exactly similar period. Finally, an incomplete advantage may be rounded off by the denunciation of the very clause which conferred it. This was the way by which Austria incorporated Bosnia. Somewhat analogously, Russia by the same Treaty of Berlin acquired Batoum from Turkey, subject to a promise by the Tsar that he would restrict it to a commercial port. In 1886 Russia, partly out of irritation at the events in Eastern Roumelia in the previous year, withdrew this promise and proceeded to fortify the port. For such a violation of treaties there is obviously less justification and should be less temptation than in the instances previously mentioned.

<sup>1</sup> The only exception to this generalization appears to be the action of Turkey in 1936, who put before the League of Nations a regular request to be released from the demilitarization of the Straits imposed by the Treaty of Lausanne.

<sup>2</sup> It is true that the demilitarization applied also to Turkey. But this did not prevent a Turkish fleet from being maintained in the Marmora which could issue out to attack Russian towns and shipping in the Black Sea in the event of war.

## CHAPTER VII

### CONCLUSION

It is inevitable that within the comparatively narrow limits of this book the space has been almost entirely occupied with a narrative of the changes effected and a consideration of the political conditions which made them possible or desirable. It has been impossible to indicate, except in a summary way in the chapter on plebiscites, the part played by public opinion in bringing about, influencing, or preventing such changes. Such an examination would be very valuable. To embark on it, however, would involve an exceedingly complicated and minute inquiry ranging over a number of countries in different continents, and varying profoundly in the political intelligence and education of their inhabitants. This is obviously a formidable undertaking which cannot be squeezed in as an appendix to a short historical sketch. All that is possible here is to point out a few very general considerations.

In the first place, peaceful change seems to be a plant which thrives under the conditions of the modern world. Though transfers of territory by marriage treaty have become obsolete it has been more common in the nineteenth than in preceding centuries. This, no doubt, is largely because no state will lightly embark upon hostilities for a comparatively small object, as wars become increasingly expensive, devastating, and far-reaching in their effects. Wherever a conscript replaced a professional army, it became necessary for statesmen to consider far more closely than in former days the reactions of the population to a war in which the majority of its able-bodied manhood would be involved. This is true within certain limits whether the state is an autocracy or a democracy, whether public opinion is organized or comparatively inarticulate. It is an undeniable though rather odd truth that vast armaments favour the peaceful solution of all

minor disputes. Mutual fear of the incalculable consequences, both external and internal, of conflict have tended to restrict the causes of war to 'vital interests and questions of national honour'.

This being so, it may be truly said that popular opinion has been the ultimate cause of the extension of peaceful change, because decisions as to peace and war throw a greater responsibility than formerly upon the shoulders of statesmen who have to make them.

This does not, however, imply that in any given case it is a direct impulse from below which has forced a peaceful issue upon those actually engaged in handling an international dispute. On the contrary, the initiative has generally come from above and the acceptance from below. It is indeed in the sphere of peaceful change that the advantages of 'secret diplomacy' are most obvious. The conclusion of a treaty which commits a nation, against its knowledge, to an engagement which may result in war is obviously open to the gravest objection. But the maintaining of secrecy at every stage which leads up to the conclusion of an agreement to settle concrete and tangible questions of dispute is the best way of ensuring the fairness of the bargain and its acceptance by public opinion. It is common knowledge that in recent times leakage of information to the press at early stages in diplomatic conversations has resulted in the whipping up of a chauvinist excitement which has embarrassed or ruined the efforts of statesmen to reach an agreement. Public opinion, like the Concert of Europe, is always prone to accept, if not to welcome, a *fait accompli*. Doubtless the belief that a favourable current of opinion already exists makes the Foreign Offices concerned more ready to embark upon a policy of peaceful change, and not to haggle obstinately over details. Doubtless also a government which controls the press or enjoys its confidence can do a great deal in preparing that favourable foundation of opinion which it regards as a necessary preliminary for serious negotiation.

Thus in 1903 the newspapers, with a delicate and patriotic art, prepared a favourable atmosphere in which the Anglo-French agreement could grow and thrive; the agreement itself being indispensable to create a genuine and permanent, as opposed to a synthetic and fleeting, cordiality between the two nations. But experience also shows that even where public opinion appears to be strongly and even violently opposed to a compromise, it is not as a rule prepared to reject it when offered in the shape of a negotiated agreement. This is particularly true if the probable alternative is war. The success of the Anglo-American treaties which terminated the envenomed disputes on the Maine and Oregon boundaries is a remarkable illustration. On the American side at least the spirit of non-compromise had been fanned into flame not merely by newspapers but by members of the administration. President Polk himself had been a protagonist of the extreme American claims in Oregon. Yet neither the Senate nor Parliament were subjected to any serious pressure to reject the treaties. Steam was harmlessly blown off by the criticisms of extremists which often tend to recommend a compromise to sensible men.

The Ashburton-Webster negotiations are particularly illuminating as an example of what diplomacy is often apt to forget—that personal contact between men who respect each other's good faith and business capacity and who undertake 'to deliver the goods' will achieve results within a few days which years of the exchange of notes have failed to do. Whereas public opinion is likely to be inflamed by the exchange of long-range diplomatic artillery, it is generally soothed by the conversations of individuals particularly selected for their peculiar fitness to settle the matter in hand. It is probable that the increasing readiness shown by Great Britain and the United States to submit disputes to arbitration was mainly due to the care shown by either government in appointing eminent and impartial arbitrators.

While it does not appear that any agreement actually reached between the parties on the subject of peaceful change has been nullified by the opposition of public opinion, it is no doubt true that the fear of such opposition has often prevented the bargain from being struck. We have dealt only with the successes of the Concert of Europe, but there were many failures to obtain a peaceful issue by means of alterations in the territorial *status quo*. The fear that the terms of an agreement would be denounced as a national humiliation, would involve the fall of a government, or even the risk of a revolution, has nipped many negotiations in the bud. The outbursts of Italian national feeling in May 1915 made it utterly impossible for Giolitti to pursue his plan of exchanging Italian neutrality for Austrian territory in the Trentino and Istria.

Sometimes indeed the national feeling is recognized as so clear and unmistakable that no statesman would even consider a proposal which ran counter to it. For example, during the Great War King Alfonso of Spain more than once begged Sir A. Hardinge, the British Ambassador, to propose to his government the cession of Gibraltar in return for Ceuta. This, he affirmed, would turn public opinion in Spain decisively on to the side of the Entente. But it is perfectly certain that no British Government would have ventured to enter upon even the most tentative negotiations on that subject.

Unfortunately it appears to be true that the wave of exclusive and egoistic nationalism which has recently swept over the world tends to encourage all governments to believe that their peoples regard every inch of their territory in the same way in which the British people have regarded Gibraltar for two hundred years. If the sacrosanctity of existing possession is to be applied to every kind of territory which every state holds by any kind of title, it is obvious that the area of peaceful change in the future is greatly narrowed, and that great evils are likely in

consequence to befall the civilized world. In almost every department of life the pace of change has enormously quickened in the last generation, and is still accelerating. Whether or not we believe in the progress of the world, it is almost impossible to conceive of it as static. When the minds of men move habitually in the categories of change, it seems certain that those who are dissatisfied with the existing distribution of territory will not consent that it shall be exempted from that law of alteration which is accepted as natural and inevitable in all other spheres. If changes cannot be negotiated by agreement, they will be enforced by violence.

Yet in spite of these considerations the nineteenth century showed a much greater elasticity in deciding between essentials and non-essentials than its distracted successor at present seems able to do. Yet it is clear that the latter century possesses two great advantages over the former—first, a collective organization which contains the promise of being converted into an instrument of international conciliation and revision more permanent, more impartial, and more universal than the old Concert of Europe—secondly, an improvement in the technique and international character of the plebiscite, which should give increasing confidence that the will of any given population can, in Europe at least, be unequivocally obtained before a proposed transfer of territory is made absolute.

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